KASHMIR

VOL. I

V. K. Krishna Menon's Speech
in the Security Council
23—24 January 1957

पं० इन्द्र विद्या वाचस्पति प्रदत्त संग्रह

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स्टाक प्रमाणीकरण १९८४-१९८५

UNITED NATIONS SECURITY COUNCIL
NEW YORK

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III. Seven hundred and Sixty-fourth meeting, 24th January 1957.

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इन्द्र विद्यावाचस्पति
चन्द्रलोक, जवाहर नगर
दिल्ली द्वारा
गुरुकुल कांगड़ी पुस्तकालय को
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Krishna Menon: The Government of India has given consideration to the statement made by the Foreign Minister of Pakistan before the Security Council on 16 January, that is a statement coming from a neighbouring country with which it is our desire to establish, maintain and continue the most intimate friendship, and made by a person who has been associated with the service of India for well over a generation and who today occupies a place of prominence in his Government.

Before I deal with the subject that is before us, I would like to make this preliminary observation. Yesterday in India, India and Pakistan signed a trade agreement. If this were merely a trade agreement for the exchange of commodities, as might happen between any peoples, it would not be of any importance. This, like so many other agreements reached between our two countries, which marks a further step forward in the effort, in justice, to get over the difficulties which have arisen from time to time, touches not the feelings so much as the standards of living of our people on both sides.

With that background I will endeavour, therefore, not to introduce invective or anything irrelevant to the subject before us or which would in any way swim against the current of co-operation and fraternity between our two countries.

The present consideration of this matter arises from a letter dated 2 January 1957 (S/3767) from the Minister for Foreign Affairs of Pakistan to the President of the Security Council. It is important for me to mention this because, as I develop the position on behalf of the Government of India, it will be obvious to the Security Council that in this matter it is necessary to place developments, phases, incidents and events in their right perspective. It is not possible to understand a problem, especially a complex problem which has engaged, in the first instance, the attention of the two countries, and the attention of other parties, including the Security Council, over the years—to which I shall refer later—without having the whole picture so that the significance of documents, arrangements and declarations can become realistic and true to fact.

The statement made in this Council on 16 January began, it is true, with a brief mention of the partition of India. It then went on to the position that India accepted "a spurious offer of accession" of the State of Kashmir, and it would appear that what was sought to be conveyed was that we are here in regard to a dispute about territory.

Mr. President, I believe that you and all but one or two members of the Security Council are newcomers to this subject. It is quite true that it is not individuals but States that represent Governments here. And even with regard to States, apart from the five permanent members of the Security Council, the bulk of them, if not all of them, are newcomers to this subject. I have the duty to the Security Council and to my Government, as well as to the cause of international peace and security, to present this problem, even at the risk of trying the Council's patience with detail, in such a way as to enable the picture to be true to fact.

It will be recalled that the last time the Security Council considered this matter was on 23 December 1952, which is more than four years ago, a fact which is not without significance because, at a later stage in his remarks, the representative of Pakistan attempted to convey to the Council the feeling that there was a crisis developing in this matter. I shall refer to that factor in a moment.

It was the Government of India that came here in the first instance. The Gov-

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ernment of India came here on 1 January 1948. It is not usual for a government of average ability and intelligence, as mine is, to come before the Security Council and to invite its attention to the wrongs it has done. In this particular case it has done nothing wrong, and in any case the matter is clear in itself.

Therefore, I shall now refer to annex 28 of Security Council document S/1100, which is on page 139 of the Security Council Official Records Supplement for November 1948. The original text is in English, and it is dated 1 January 1948. I hope the Secretary-General will bear with me when I say that it is essential for us to quote these documents, with all the details, because, at variance with the practice of the General Assembly, the Security Council's documents require considerable research if you wish to find some particular point in them. There is no volume of resolutions on this subject; you have to search for the resolutions and put them together. That may be a good thing, because one learns more about them. I should like to read the beginning and the end of this:

> Under Article 35 of the Charter of the United Nations (Krishna Menon: which means that we did not come here with a request for drastic action as we were entitled to do) any Member may bring any situation (Krishna Menon: and I emphasize this word situation, for we did not bring here a dispute but a situation) whose continuance is likely to endanger the maintenance of international peace and security to the attention of the Security Council. (Krishna Menon: Then we went on to say): Such a situation now exists between India and Pakistan....

We felt, as indeed my predecessor in this chair pointed out to the Council at that time, that there is no dispute about territory. If it were a dispute about territory, I say with great respect that the Security Council under the Charter would be incompetent to deal with it because that would be either a political or a juridical question, and under Chapter VI or Chapter VII the Security Council would deal with questions of international peace and security. So we brought here a situation and not a dispute.

But that is not the most important part. We went on to say:

> The Government of India request the Security Council to call upon Pakistan to put an end immediately to the giving of such assistance. (Krishna Menon: immediately, on 1 January 1948, and today we are nine years away from it) which is an act of aggression against India.

I shall quote these words more than once before I have concluded, in order to discharge my responsibility as the representative of my Government:

> ...which is an act of aggression against India.

That is the crux of this question. What we are considering here is not merely various resolutions or the method by which a problem may be resolved otherwise. What is before us, as I shall point out later, is this question of aggression, because the whole United Nations is founded upon the basic principles of international law and behaviour. That is based upon equity, and he who asks for equity must come with clean hands. Therefore, our starting point is that we came here in order to file a complaint, to ask for redress on a charge of aggression. If Pakistan does not mention this starting point, then we have to point out why we were so concerned about it. After all, there are difficulties sometimes. Even today we have frontier raids one way or another. But why did we then ask the Security Council to deal with this matter? "If Pakistan does not do so,"—that is to say, halt the aggression,—"the Government of India may be compelled in self-defence"—and I interpolate that self-defence is not only a right of the Member States of the United Nations but, I submit, it is an obligation that Member States have under the Charter because they have an obligation to maintain the sovereignties of their own countries—"the Government of India may be compelled in self-defence to enter Pakistan territory",—which we did not do,—"in order to take military action against the invaders. The matter was, therefore, one of extreme urgency and called for immediate action by the Security Council for avoiding a breach of international peace."

As the delineation of this picture becomes more complete it will be clear that the efforts of India and of the Security Council and the approaches made to Pakistan by mediators and so on have at earlier stages been primarily adressed to the halting of hostilities. Other things follow.

Therefore, our country was faced with the position that part of its territory was invaded, and that invasion had to be resisted; it had to be rolled back. The normal practice of war would have been to defend by attacking the invader. But this was in 1947, and it was a fact, which remains true to us at any rate today, that these were the same people who were part of our country but ten years ago. What is more, between January 1947 and October, when these things started, our two countries had only just passed through the holocaust of fratricide, that is, of Indian people killing Pakistanis, and Pakistanis killing Indians. We had witnessed an orgy of violence, and it was the desire of our Government that nothing should be done to rekindle these embers which were still burning at that time.

That is the original position, and I shall keep coming back to it. We are here on a complaint of aggression. That aggression has not been resolved; it has not been got rid of. So long as there are forces of other countries in a place where they have no right to be, irrespective of our rights, I think the Security Council is called upon under the provisions of the Charter to act accordingly.

In this context, so many trees have grown, and a very considerable amount of undergrowth, that it is impossible to see the wood properly, and it will be my attempt to present it as best as we can. We shall try to assist the Security Council to see this picture as it was. As I said, five years ago we debated this, and in five years—even apart from the nine years—a great many things happen. It is part of the inevitable practice of nations that the changes in conditions that time brings about and which may go to the root of a question have also to be taken into account.

From there, with great respect to my colleague, the Foreign Minister, I shall follow his example of looking at this problem since the partition of India.

India became an independent country on 15 August 1947. We are not concerned here with the political issues but with the constitutional and other issues relevant to this problem. The independence of India was attained by an act of the United Kingdom Parliament. The Independence Act of 1947 is that Act, and at later stages we shall draw attention to the clauses relevant to these matters. On 17 June 1947 the United Kingdom Parliament passed the Independence of India Act whereby India was created a self-governing dominion and a successor State to British India. Popularly, we speak of the British Parliament having partitioned the country into two; constitutionally that is not correct.

What happened was that British India obtained independence. India, under the British Crown, obtained independence and in that process Parliament constituted certain territories—which we had agreed on before politically—into another dominion. Therefore, as regards our State, for example, in the United Nations, we did not have to be admitted anew. We came here as a successor State to the India that signed the Covenant of the League of Nations, that signed the Treaty of Versailles, and which also went to San Francisco to help in establishing this Organization, at which time my distinguished colleague from Pakistan was one of the representatives. So India became the successor State by this Act of 1947. The 1935 Act, that is to say, the Act of the British Parliament passed in 1935 and which came into force around 1936, became the Constitution Act.

It was amended in order to deal with certain anomalies, such as the reference to the Crown the Viceroy, and so on. Various such amendments were made during that period. That is the Constitution Act. Now this Act—and it is important to remember it—deals with the Federation of India. British Dominion in India or British suzerainty in India consisted of the overlordship of what is now called by that very ugly word, the sub-continent, that is, the Indian peninsula.

That territory consisted of two groups of political species; one was the British provinces directly ruled under the ultimate direction of the Secretary of State from London; and the other were the Indian states. So far as I recollect, there were 562 of them when we obtained independence. Therefore, the problem arose as to what was to be done with the states, because the states were not directly ruled; they were indirectly ruled.

The British Government, with the wisdom which is often not credited to it but which in fact exists, had foreseen that India was likely to become independent. Therefore, as early as the third decade of this century they had tried to define the relations between the British Crown and these states by what is called a doctrine of paramountcy. It is necessary, for purposes of record and for any future troubles that may arise—not in this particular issue—to state that we do not necessarily accept everything that everybody says about the doctrine of paramountcy. It does not appear anywhere else in international law.

Roughly speaking, for this purpose the doctrine of paramountcy is this: that when we speak of the relations between the Indian States—and here again let me emphasize that when the British speak about the relations between the Indian States or we speak about constitutional law,—it is the relations between the Crown and the head of the State, because all treaties were between the Crown and the Princes. There were no treaties ratified by any parliaments or legislatures. The relationships were established on account of the treaties, which were really a kind of charters given, by the British Crown and the Princes. And the British Government of the day, the Viceroy of the day, argued that this established a privity between them, a privity of contract, a privity of relationship between them, and expounded for the first time, in 1926, this doctrine of paramountcy.

Under the doctrine of paramountcy, when India gained independence the British Government proposed that the Crown was withdrawing. The Crown was withdrawing from the peninsula. The Crown was withdrawing from effective control of British India. And that is a point which I particularly would like the representative of the United Kingdom to take special note of.

Why were these changes necessary in the relations between the Princes and the Crown? Because the Crown was going on legal theory fixed in a two-fold way, through the Viceroy, on the one hand, and the Governor–General, on the other. It was a fact that he had the Indian Army, it was a fact that he had Indian revenue, it was a fact that he had the Indian police, it was a fact that he had the Indian customs organization which enabled him to arrange the relations with the States.

Some gentlemen around this table are well aware, in constitutional practice, of the difference between status and function. Functionally, therefore, it was the British Government of British India that maintained these relations. It is quite true that there was a constitutional aspect. Therefore, for the purpose of the record we want to read into it that whatever remained, in the British Government, by virtue of this function, remains in the Government of India by virtue of its succession. Therefore, the doctrine of paramountcy was limited by this phraseology.

In order that there may be further support for this argument, I wish to draw the attention of the Council, and particularly the representative of the United Kingdom, to the fact that a distinguished jurist who was Viceroy of India in this period when these changes were dreamed of in 1926, told the Princes that they had no sovereignty and that they had no independence at any time. There is a classic phrase which says: "Over and above all treaty obligations are certain rights that rest in the Government". And therefore at no time was the independence of the Indian States the kind of sovereign independence that would have enabled them to become Members of the United Nations. It is quite true, as it is said in the Cabinet Mission's Memorandum, that they were competent to discuss some political relationship other than accession; that is possible. But they would not have been independent, like Colombia, or Cuba, or France or any of the countries around here, because they had no international status. I want to submit that the British Government, or any Government in the world, cannot just make a country like that.

Independence rests upon function, upon territory, upon the capacity to exercise sovereign rights and, what is more, upon the recognition of the world. Therefore, when we speak about the three alternatives, this has to be borne in mind. My Government, in view of the complications that arise in these matters, is anxious that this should be on the record somewhere, even though it might not have an immediate bearing on what you are going to consider.

The Mission of the British Cabinet was in India in 1946, and on 12 May 1946 it issued a statement in the form of a memorandum. For the convenience of the Council, my delegation has prepared these documents for the purpose of ready reference. The memorandum to which I have just referred appears in our document No. 4. I shall, at some stage, ask for these documents to be circulated as United Nations documents. I believe we are entitled to ask that. But, for the purpose of reference, the President has a copy, and copies have also been given to the other Members of the Council.

It will be seen that in our document No. 4—which, for convenience, we have handed to the President and his colleagues in the Council—the position is briefly set out at the end of page 3 and the beginning of page 4. I do not want to take up the time of the Council by reading out the whole of this document, but it says in part:

> This means that the rights of the States (Krishna Menon: and the important word is 'rights') which flow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the paramount power will return to the States.

That is one statement. The reference is to rights; there is no reference to the other relationships that have been created, and it will be seen that this is referred to in the British Prime Minister's statement in Parliament, because, over and above rights, there are functional relationships set up. The document goes on to say, on page 4:

> Political arrangements between the States on the one side and the British Crown and British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the successor Government or Governments in British India, or failing this, entering into particular political arrangements with it or them.

Now this is the basis to which my colleague has referred as being the relationship between the States and India in the future. And, therefore, when the British withdrew from India the *Pax Britannica,* of which we had heard a great deal, became limited by this fact. This new State that had been set up had to weave these threads of unity afterwards. The greater part of the States were in geographical and other contiguity to India, and therefore, both in the British House of Commons and in the Chamber of Princes —which then was the organization for consultation between the Mission and the Princes, and of which my colleague sitting behind me was at that time the Chancellor

—the representative of the Crown, the Viceroy of India, made his announcement as to what all this meant.

There is a statement of what Lord Mountbatten actually did say which appears in Mr. Khan Noon's statement, and we want to deal with that. It says:

> The Viceroy and Governor-General, Lord Mountbatten, who represented the suzerain—the King of the United Kingdom and Emperor of India—however, advised the Princes of India on 25 July 1947 that in deciding the question of accession, they must pay due regard to the communal composition, the wishes of their peoples and the geographical location of their States.

I am not willing to rely on my memory in regard to this carefully considered document. We have done all the research we can; we are familiar with the subject. There is no such statement of that character. What is more, the statement does not refer to communal representation. What it says is this—and this is the statement of 25 July 1947 by Lord Mountbatten in the Chamber of Princes:

> You people are now free to join either Dominion, or you can be even, in a sense, independent, but of course you cannot evade geography; you cannot evade all that has happened in the past. So you people have to make up your mind.

He said to them:

> It was necessary to set up two States Departments...But when I say that they are at liberty to link up with either of the Dominions, may I point out that there are certain geographical compulsions which cannot be evaded. Out of something like 565 States, the vast majority are irretrievably linked geographically with the Dominion of India. The problem therefore is of far greater magnitude with the Dominion of India than it is with Pakistan. In the case of Pakistan the States, although important, are not so numerous, and Mr. Jinnah, the future Governor-General of Pakistan, is prepared to negotiate the case of each State separately and individually.

The rest of it refers to our internal arrangements. The Viceroy went on to say that, in order that there might be a smooth passage over, he was arranging to have a clause inserted in the Independence Act in regard to internal arrangements.

On page 5 of the document it is stated:

> Let us turn for one moment to the Cabinet Mission Plan of 16 May 1946. In this Plan the proposal was that the States should surrender to the Central Government three subjects—Defence, External Affairs and Communications. That was a plan which, to the best of my belief, every Ruler and every State accepted as reasonable, fair and just.

But the key phrase in his statement is this:

> You cannot run away from the Dominion Government which is your neighbour any more than you can run away from the subjects for whose welfare you are responsible. Whatever may be your decision, I hope you feel that I have at least done my duty by the States.

I have spent sometime on this statement because there is reference here to a distinguished national of the United Kingdom who performed such great services to both our countries and to the Commonwealth and to whom we referred as the Representative of the Suzerain of India at that time, and it is essential that there should be no mistake in this matter. Lord Mountbatten did not at that time—nor did the British Parliament at any time in regard to the States—ever refer to communal representation, by which, in India, is meant the grouping of Hindus and Moslems. There was no reference, and it was not the idea at that time that the States should be represented in that way in any of these documents.

But then the other document on which my distinguished colleague relies is the document of 3 June 1947, which is a statement by Mr. Attlee, then Prime Minister of the United Kingdom, in the British Parliament on the transfer of power. I will not labour the Council by reading this document, but it will be found that this document definitely says that this was concerned exclusively with British India. This is what the Pakistan Foreign Minister says:

> The basis of the partition of the British Empire in India (Krishna Menon: if by that is meant British India plus the States) as set forth in the statement of the then Prime Minister of the

United Kingdom of 3 June 1947, was that Pakistan would be constituted by the contiguous Muslim majority areas in the north-west and north-east of the sub-continent, and India would comprise contiguous non-Muslim majority areas. It was thus universally assumed that, following the basis adopted for Partition, Princely States with a Muslim majority in population contiguous to Pakistan would accede to Pakistan.

There is nothing like this in the 3 June document. What is more, it makes a special reservation to say that this does not concern the Indian States, but is exclusively concerned with British India. And it is not splitting hairs on this matter, because he was trying to explain the basis on which the grouping of territories in the partition had taken place. This is merely an explanation of that character. It is explained in paragraph 18 of Mr. Attlee's statement:

> His Majesty's Government wish to make it clear that the decisions announced above relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of 12th May 1946 remains unchanged.

Therefore, I submit that this 3 June document has nothing to do with this matter, and I have said that, because there is some irrelevancy as to such claims as Pakistan puts forward for Kashmir.

Now it will be seen from that that, while these territories were enabled to be independent, as I have said before, there were a large number of practical arrangements between these various areas. There were 565 States scattered all over India from north to south and east to west. A great many of them were islands. A great many of them were territories which were separated by bits of British Indian territory. There were questions of communications, questions of customs, questions of postal arrangements and various other matters; and over and above those, there was the question of defence. I shall not read out that part, but it will be noted that the Viceroy referred to this question as follows:

> You Princes cannot defend yourselves; you have to be, in a larger grouping. That is the only way to do it.

In the statement made later in the British Parliament by the Prime Minister he referred to the fact that arrangements should be made to carry on in the intervening period. That was at the time when the British were still ruling India and when we had not been partitioned *de jure*. The Viceroy and Governor-General was still the head of the Government and, at that time, prior to the partition, these arrangements were being carried on, and it was suggested that a standstill arrangement should be made by the two States with whoever they wanted to function.

Therefore, the first part is contained in Section 7 of the Indian Independence Act of 1947, which says:

> His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India;
>
> the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise....

Therefore, there was a void which had to be filled and that is done by a proviso:

> Provided that, notwithstanding anything in paragraph (b) or paragraph (c)—(Krishna Menon: which I have just read)—of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

This is the period between 17 June, when this Act was passed, and 15 August, when we became independent, and 14 August, when they became independent. We are the younger State by six hours.

Arising from this, standstill agreements, as they were called, were formulated. And the purpose of the standstill agreements was to carry on business in the way indicated here, and, so far as we were concerned, that included the matter of the security of the country, because, as I have said, there were areas interspersed all over. They were on our coasts, and they were very vulnerable in the post-war era. Therefore, the two Dominions had to make their own arrangements in this connexion, as the Viceroy had pointed out. Mr. Jinnah, who afterwards became Governor-General of Pakistan, was to negotiate with these States separately. Mr. Zafrullah Khan, who represented Pakistan in the Security Council meeting on 16 January 1948, referred to these agreements, so far as they were concerned, and pointed out what they actually meant. He said:

> In any case, he (Krishna Menon: the Maharajah) had entered into a standstill agreement with Pakistan. It is necessary to explain what a standstill agreement is. India, being one political entity before the division on 15 August 1947, had a common system of defence, of railways, post offices, telegraphs, telephones, and a host of other matters. If on 15 August, when at least a nominal division took place between these two Dominions—in some places, the actual division also took place on that date—all these matters had had to be adjusted, the situation would have been impossible. A new currency could not be started merely by a stroke of the pen.[1]

Mr. Zafrullah Khan went on to say:

> Each State would come to a standstill agreement with the Dominion of India or the Dominion of Pakistan, according to its own situation and requirements, providing that these matters—mainly communications, and so on should continue to run on the old basis.[2]

There was a further statement by Mr. Zafrullah Khan. At the Security Council meeting on the next day, he said:

> I explained yesterday to the Security Council what the standstill agreements mean. Kashmir had arrived at a standstill agreement with Pakistan with regard to her communications, supplies, and post office and telegraphic arrangements.[3]

I want the Security Council to take note of this last part, it was with regard to communications, supplies, and post office and telegraphic arrangements, and nothing else. Mr. Zafrullah Khan went on to say, "This agreement became operative on 15 August".

The history of the standstill agreement is contained in the telegrams exchanged between the Prime Minister of Jammu and Kashmir, on the one hand, and the Prime Minister of Pakistan, on the other, and there was a similar exchange of telegrams between the responsible Minister in New Delhi and the Prime Minister of Jammu and Kashmir. These telegrams at the present moment have not been numbered, but I will number them in the same way and ask that they be included in the record.

As a result of the telegrams that passed between the Prime Minister of Pakistan and the Prime Minister of Kashmir, a standstill agreement was arrived at. The contents of that agreement have been submitted to this Council by no less an authority than Mr. Zafrullah Khan, who was Foreign Minister of Pakistan at that time. It must be stated there were no signatures on these, because they were agreed between the Governments by means of telegrams.

So far as the Government of India is concerned, on the same date an identical telegram was sent to the Government of India, and India was in the process—and this is important—of negotiating these standstill agreements, and they are contained in the second set of telegrams. In a telegram from the Prime Minister of Jammu and Kashmir to the Government of India it was stated:

> Jammu and Kashmir Government would welcome standstill agreements with Union of India on all matters on which these exist at the present moment with outgoing British Indian Government. It is suggested that existing arrangements should continue pending settlement of details and formal execution of fresh agreements.

It may be said here that the "existing

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[1] Security Council Official Records, Third Year, 228th meeting, Page 66.

[2] *Ibid.*

[3] *Ibid.*

arrangements" comprised the use of Indian forces if there was internal rebellion in one of the States. That had been practised for a long time, but it is not necessary for me to bring that out. The Government of India telegraphed back:

> Government of India would be glad if you or some other Minister duly authorized in this behalf could fly Delhi for negotiating standstill agreement between Kashmir Government and Indian Dominion. Early action desirable to maintain intact existing agreements and administrative arrangements.

Before the Prime Minister could come to discuss these matters, Kashmir was invaded. Therefore the standstill agreements which they were trying simultaneously to conclude with the two countries were interrupted, not by the action of the Government of Kashmir or by the Government of India, but by the active aggression complained of. Therefore, it was not possible for the standstill agreement contemplated to go on, and other developments followed.

There is only one matter to which I wish to refer. We propose to put in, for the reference of the Security Council, the standstill agreement used by the Government of India with regard to all the Dominions and States. This document is important, because we did not cook it up for Kashmir. It is a standard document. There are no other agreements and, therefore, if Kashmir had concluded an agreement with us, the purpose of it would have been as contained in this document. I will not read the text, since it would take too long, but the schedule of this document is important and the standard form was different from the substance given of it by Sir Zafrullah Khan. I am pointing out the difference between the standstill agreement of India and the standstill agreement of Pakistan. The schedule included air communications, arms and equipment, control of commodities, currency and coinage, customs, Indian States' forces, external affairs, extradition, import and export control, irrigation and electric power, motor vehicles, national highways, opium, posts and telegraphs and telephones, railways, salt, central excises, relief from double income tax and other arrangements relating to taxation, etc.

All these subjects are contained in the schedule of the standstill agreement. Therefore, if there had been no interruption by invasion, it is normal to conclude that a standstill agreement would have been concluded and that that standstill agreement would have included external affairs, control of State forces and of other matters which spring from the sovereignty of a country.

I should like to say that there is nothing inconsistent in a State concluding a standstill agreement with two different countries, especially a State of this kind, where there were railway communications and postal communications with Pakistan. That is why Sir Zafrullah Khan, with great accuracy, pointed out what they had, and this is what we would have had, because this is a pattern which is not altered, but at that time the invasion of Kashmir began.

There is telegram No. 1, the chronology of which is important. I have already referred to the telegrams sent in connection with this matter by the Prime Minister of Kashmir to the Government of India. The representatives will note that the date of this telegram is 12 August 1947. On 16 August, four days later, the Government of Pakistan telegraphed that it had agreed to a standstill agreement and a few days later the Chief of Staff of the Jammu and Kashmir forces, Major-General Scott, a British Officer, submitted his first report to his Government, the Kashmir Government which still had not acceded to anybody, on the border raids from Pakistan. That does not mean there had been no raids before.

All of us know, especially now with all our discussions about United Nations forces, that it takes some time for this sort of thing to travel. Anyway, on 31 August 1947, the Chief of Staff of the Jammu and Kashmir army submitted a report to his Government on border raids from Pakistan. So the invasion had begun. That was what prevented the officials of the Kashmir Government coming over to India at that time.

On 4 September, on the basis of a telegraphic report submitted by its Chief of Staff, Major-General Scott, the Kashmir Government protested by telegram to the West Punjab Government against armed Muslims from Rawalpindi district infiltrating into the State. Protests were also made to the Deputy Commissioner.

Two days later there was a marked increase in this activity.

A patrol visited Alibeg, twelve miles west of Bhimbar and Major-General Lovett, commanding the Seventh Infantry Division —that is to say, presumably of the Pakistan forces—was informed. On 13 September, a Pakistan Army patrol visited Alibeg and Jatlai, fourteen miles west of Bhimbar, both in the State territory. They are all contained in the diary kept by General Scott.

On 17 September—we are now only one month from independence—a band of 400 armed raiders, twelve miles south-east of Ranbirsinghpura drove away herds of cattle belonging to State nationals.

On 18 September, railway service between Sialkot and Jammu was suspended by Pakistan authorities without any reason and in contravention of the Standstill Agreement. So if there was an agreement it was broken by the conduct of the Pakistan Government on 18 September—and this action was not isolated. Armed gangs entered Kashmir in Palandri, Poonch, across the State border. By 18 September the invasion had gained momentum.

On 28 September hundreds of armed men with service rifles, automatics and spears attacked a Kashmir State patrol near Chak Harka. On 30 September hundreds of armed Pathans entered Dhirkot Than inside the State territory.

On 3 October, the Jammu and Kashmir Government protested telegraphically to Pakistan against hundreds of armed people from Murree Hills in Pakistan operating in Poonch—part of which is now occupied by Pakistan, part of which is in the other side; it also protested against the essential supplies, including petrol, rice, salt and cloth being withheld. That is the second violation of the Standstill Agreement.

On 4 October armed men renewed their activities in the Chirala area and near the Jhelum river and fighting between the raiders and the State forces began. Now we had reached a state of war.

On 10 October two sections of the Pakistan army followed by an armed gang attacked Pansar village in Jammu. I submit with great respect and a sense of responsibility that what I have now read out is one of the key points in the consideration of the whole of this question—that is to say, Pakistan informed us that they were not involved in this matter. They said they were trying to stop them. The Security Council asked them not to get involved and not to do anything. Even as early as 10 October, long before the Indian forces had been there, Pakistan had invaded the State of Kashmir. How does it become important? Because irrespective of whatever claims, whatever relations, whatever titles the Indian Government may have on Kashmir, Pakistan certainly had no rights because it had no accession, no relationships of any kind. At best it was foreign territory. It was an act of aggression. So, on 10 October 1947 the invasion began. And here the diary says that two sections of the Pakistan army followed by an armed gang attacked the village. And this item appeared in the Pakistan papers:

> The North West Frontier Province Premier is reported to have announced that firearms would be distributed among the people liberally so that all except the 'enemies of Pakistan' can have them.

A very familiar sound.

On 13 October 1947 the following was stated in a newspaper:

> Pakistan has cut off from Kashmir supplies of petrol, sugar, salt and kerosene oil, although a standstill agreement between them has been signed.

Norman Cliff, who was the correspondent of the *News Chronicle* (London) not an Indian paper from Kashmir, published this news, in that newspaper.

On 15 October the Maharaja appealed to the British Prime Minister, probably by force of habit, because that was the practice in the past days. The Kashmir Government cabled to the British Prime Minister about the economic blockade of the State by Pakistan and the beginning of the invasion from Pakistan in Poonch. He went on to say:

> People all along the border have been licensed and armed with modern weapons under the pretext of general policy which does not appear to have been followed in the case of internal districts of West Punjab—whereas military escorts are made available for several other purposes, none is provided for safe transit of petrol and other essentials of life. Protests merely elicit promises which are never implemented. As a result of obvious connivance of the Pakistan Government, the whole of the border from Gurdaspur side up to Gilgit is threatened with invasion which has actually begun in Poonch.

that is to say, away from the western border, the western district towards the south of the State right up to the mountain area on the frontiers of Sinkiang, the Soviet Union and other countries. In all those areas supplies are made. Some days later, the Jammu and Kashmir Prime Minister telegraphed the Prime Minister of the North West Frontier Province—that is, a province of Pakistan—and the Deputy Commissioner of Rawalpindi, both in west Pakistan, about people armed with modern weapons infiltrating from Hazara and Rawalpindi districts in West Pakistan into the State and asked them to stop the infiltration. The invaders continued their progress along the Jhelum Valley road towards Srinagar. Srinagar is the summer capital of Kashmir, founded about 2,300 years ago by the great Emperor Asoka. Their triumphant march was temporarily stemmed at Uri, a town fifty miles from Srinagar, by the demolition of a bridge and the gallant resistance of about 150 men under the command of a Brigadier of the Kashmir army who was killed fighting a memorable last-ditch battle. The raiders managed to construct a diversion which was about a mile long, requiring considerable engineering skill, as, according to *The Dawn* of Karachi of 7 December 1947, it was completed in two days—that is to say, in this invasion the Pakistan sappers or engineer regiments—their REME's—must have participated. It was not possible for them to do otherwise. A fact will be noticed here to which I will refer later. These men were resisted only by the national militia, by the local population. They were not welcomed as liberators. They fought a last-ditch battle; they resisted these people. That was on 22 October.

On 24 October the Maharaja, who was the head of the State—and it makes no difference in this particular matter whether the Maharaja is constitutional or unconstitutional, whether you like his face or you do not like it or what is the nature of his domestic life; that does not come into it; here is a question of State theory; He was the head of the State and according to the Constitution, the only person competent to sign an accession; nobody else could do it—appealed to India for military help.

May I halt here for a moment. Until now no one from India, either Army or ministers or anyone, had gone into Kashmir to persuade the Maharaja. No police had been sent. We did not put any pressure on him; in fact, if I may interpolate, in a previous period Lord Mountbatten, on behalf of the Government of India, told the Maharaja of Kashmir, "You will accede to Pakistan if you wish and we will not take it as an unfriendly act" because the Government of India at that time was concerned about not having these States suspended in a vacuum, being the centres of trouble and difficulty, especially a frontier area.

If they had acceded in the normal way, we would have accepted it, as indeed we accepted the sorry partition to which we subscribe and which we have no desire to undo. The Maharaja appealed to India.

On 25 October Lord Mountbatten attended the Defence Committee at which General Lockhart, the Commander-in-Chief in India, read out a telegram from the headquarters of the Pakistan army—and this is of importance to my colleagues of Australia and the United Kingdom—stating that some 5,000 tribesmen had attacked and captured Muzaffarabad and Domel and that considerable tribal reinforcements could be expected. Reports showed that they were already little more than thirty-five miles from Srinagar. It was quite normal for those two British officers to exchange telegrams, especially at that time; Pakistan had not acknowledged its invasion. Obviously the Commander-in-Chief and British officers were working outside the policy region.

On 26 October 1947 the Maharaja asked for protection—I shall deal with that letter when we come to the question of accession—and he offered accession to India. This is the position up to 26 October and I will deal with the document regarding accession to India of Kashmir and the surrounding States later, but it is necessary for me to dwell at some length on the history of this period, between that time and the cease-fire. If the members of the Security Council will look at the pages of Document No. 1 from page 5 onwards they will see what happened in Kashmir. It is stated on page 5:

> ...It is a fact that several top-ranking British officers serving in Pakistan did have an inkling of these preparations and plans, though I do not suggest that they took any hand in their execution.
>
> We came to know later (Krishna Menon: that is, the Government of India came to know later) that, as soon as the June 3rd plan was announced, Kashmir became the subject of attention and study in certain military circles. Why was there a demand on the Survey of India for so large a number of maps of Kashmir. (Krishna Menon: that is, from our Ordnance Department in Delhi?) What was the mysterious 'Operation Gulmarg', copies of orders in respect of which fell into the hands of those who were not meant to receive them?

This was because the Government of India also had an intelligence service. The document goes on to say:

> ....the appearance at the psychological time of Jinnah's private secretary at Srinagar, the presence of Jinnah himself at Lahore, cannot be ascribed entirely to coincidence......

On 28 October 1947, it is recorded in a diary written at the time:

> In the middle of today's Defence Committee, Auchinleck rang up Mountbatten (Krishna Menon: Auchinleck was a British Field Marshal and Supreme Commander of Armed Forces for the partition of personnel and physical assets of these forces) from Lahore to say that he had succeeded in persuading Mr. Jinnah to cancel orders given the previous night for Pakistan troops to be moved into Kashmir.

I have read this in order to convince the Council that as early as 28 October 1947 the invasion by Pakistan, by a State and not by irregulars, not by a lot of hooligans, but under the command of the Governor-General, had already taken place. The Pakistan Commander-in-Chief was a British officer at that time who, in the absence of General Masservy, telephoned the Military Secretary of the Governor of the West Punjab, with whom Jinnah was staying. General Gracey replied that he was not prepared to issue any such instructions without the approval of the Supreme Commander; that is to say, in those transitory stages it was not quite clear—in fact Pakistan voiced and published a complaint that Gracey had no business to disobey these commands. He was under the command of Auchinleck.

> At Gracey's urgent request Auchinleck flew to Lahore that morning and explained to Jinnah that an act of invasion would involve automatically and immediately the withdrawal of every British officer serving with the newly formed Pakistan army.

I would like to say that in all these matters, the British officers who served with our army and, so far as we know, the bulk if not the whole of the British officers serving with the Pakistan army, remained aloof from the lethal operations.

An order given by Mohammed Ali Jinnah in 1947 for Pakistan troops to launch an attack on the province of Jammu was ignored by General Douglas Gracey, who was then acting as Commander-in-Chief of the Pakistan army. This was revealed on 20 March 1956 at a meeting of the Kashmir Liberation Conference held in Dacca under the auspices of the All-Pakistan Millat-e-Islam Convention by ex-Major-General Akbar Khan of the Pakistan army. This was the ex-Major-General Akbar Khan who afterwards appeared on the Kashmir scene under the name of General Tariq or something of that kind, who later was charged by the Pakistan Government with the offence of treason, or something like that—I forget what it was—and went to prison. Major-General Akbar Khan said that General Gracey thus jeopardized the chance then available of liberating Kashmir. This was the view of the senior Pakistan officer at that time: that the British Commander-in-Chief, by refusing to carry out these orders had thrown away the chance of liberating Kashmir.

Mr. Jinnah gave his order after a conference held on 27 October 1947 at Lahore with Pakistan army chiefs. General Gracey said that before launching the attack he would confer with Field Marshal Auchinleck, who was then responsible for superintending the partition of the old Indian Army and the transfer of troops from it to the new Indian and Pakistani armies. Akbar Khan said that Mr. Jinnah's directive was correct and wise; that General Gracey's insistence on conferring with Field Marshal Auchinleck was unjustified because Auchinleck was not in any way concerned with the operations of the Pakistan army—and there is something to be said for Akbar Khan's arguments. He then described the acceptance of the United Nations cease-fire order in Kashmir and Jammu as inopportune. Instead, Pakistan should have accepted the United Nations mediation in 1948 when the District of Poonch was under the control of the "Azad Kashmir Government".

During this period, various acts of brigandage, of rapine and plunder took place. and if I have the time I would go into this at great length. But what is the political importance of this? The political importance is that if the Kashmir territory was aligned with Pakistan by kinship, by links of blood, race or religion, that is a strange way of showing that friendship, by invading its country, and the rapine and plunder of the raiding forces continued up to Baramula. which is only a few miles from Srinagar. The town was sacked and burned. In spite of the risk that I may take of prolonging this statement, it is necessary at least to look into some parts of this situation.

In his budget speech to the Legislative Assembly of the Frontier Province on 7 March 1949, Premier Abdul Qayyum Khan advocated a special grant for the tribesmen and justified an allotment in these words:

> The House will recall with pride the fact that in our greatest hour of danger the Masuds responded to our call by rushing to the rescue of the oppressed Muslims of Jammu and Kashmir State.

I know of no rule of international law which confers upon a State the right to go and protect someone else in another State, even if he is oppressed. If that were the case, no State would be stable.

On 31 October 1947 the Prime Minister of India telegraphed to the Prime Minister of Pakistan:

> Raiders from the Frontier Province or along the Murree road come from Pakistan territory and it is the easiest thing in the world to stop them at the two bridges which connect Pakistan territory to Kashmir.

We did not blow up those bridges because at that time we were very careful not to go anywhere near Pakistan territory.

> They were not so prevented, (said Mr. Nehru) and their equipment and arms including artillery and automatic weapons bear witness to the help being given to them. We are credibly informed that regular officers of the Pakistan army are advising the raiders.

The Minister of Health in Sind, another province of Pakistan, at that time appealed to all trained and demobilized soldiers to proceed as volunteers to the Kashmir front.

The Prime Minister stated that there could be no doubt whatsoever that all these invaders had come across from Pakistan territory. He said:

> We have a right to ask the Pakistan Government how and why these people could come across the Frontier Province or West Punjab, and how they have been armed so effectively. Is this not a violation of international law and an unfriendly act towards a neighbour country?

At least on this point, the United Nations Representative found that it was a violation of international law. The Prime Minister continued:

> Is the Pakistan Government too weak to prevent armies marching across its territory to invade another country, or is it willing that this should happen? There is no third alternative.

Now comes perhaps the most important evidence of the direct implication of Pakistan in this raid. While this was going on, the Government of India was still trying to settle matters and attempting not to have a repetition of what happened in the previous months in the north-west of India and the north-east of Pakistan. It is in that connection to which the telegrams mentioned by the Foreign Minister of Pakistan refer and to which I shall come in a moment.

Mr. Jinnah invited the Prime Minister to go to Lahore, but he was unable to go owing to ill health. However, the Governor-General went, and what happened? At that time discussions took place and it was said that both sides should call off their troops; that is to say, the Indian army should be withdrawn and the raiders, as they were then called, should also leave. But the Pakistan side, represented by Mr. Jinnah, had all along been saying: "We really cannot do anything about these people. They are co-religionists. How can we stop them?" Therefore, either the Pakistan Government had no control over them, or they were abetting them, or there was a combination of both. Mr. Jinnah, therefore, proposed that both sides should be withdrawn. Lord Mountbatten asked the common-sense question of how Mr. Jinnah could be responsible for withdrawing the tribesmen if he had no control over them, to which Mr. Jinnah replied, "If you do this I will call the whole thing off".

Independent evidence has been offered by London newspapers which in no way could be regarded as being disposed too favourably towards India in these matters at that time. Alan Moorehead, correspondent of the London *Observer* in Pakistan, wrote as follows: "The Pakistanis look on this as a holy Muslim War." I read that deliberately, because that is the position even today. This afternoon when we go into these questions we shall be able to cite evidence that that is the position, that is to say that India is threatened by a campaign of hatred and preparation for an aggression against its territory. We shall not fire a shot and we shall not allow a soldier to leave our borders, but just the same as anyone else we shall discharge our duty of self-defence. This correspondent wrote:

> They look on this as a holy Muslim War. Some of them I have seen talk wildly of going to Delhi.

Alan Moorehead motored to Peshawar and the Khyber Pass from where this crusade began. He wrote: "Everywhere recruiting is going on...... . This is happening not only in the tribal territory...but inside Pakistan itself." That was at the end of October and the beginning of November 1947.

There is also photographic evidence. An Associated Press photographer, presumably an American, flew over a section of Kashmir and said that he saw more than twenty villages in flames. The villages, in an area ten miles long and ten miles wide, apparently had been set fire to by the Muslim invaders who were scouring the Valley and moving in the direction of Srinagar.

In a report in the *New York Times* by Robert Trumbull, dated 10 November 1947, we read the following:

> Baramula, India, 10th November—The city had been stripped of its wealth and young women before the tribesmen fled in terror at midnight, Friday, before the advancing Indian

Army. Surviving residents estimate that 3,000 of their fellow townsmen, including four Europeans and a retired British Army Officer, known only as Colonel Dykes, and his pregnant wife, were slain. When the raiders rushed into town on 26th October, witnesses said: 'One party of Masud tribesmen immediately scaled the walls of Saint Joseph's Francescan Convent compound, and stormed the Convent Hospital and the little church. Four nuns and Colonel Dykes and his wife were shot immediately. The raiders' greed triumphed over their blood lust.' A former town official said: 'The raiders forced 350 local Hindus into a house, with the intention of burning it down. The group of 100 raiders is said to be holding another five, as hostages, on a high mountain, barely visible from the town. Today, twenty-four hours after the Indian Army entered Baramula, only 1,000 were left of a normal population of about 14,000'.

Here again is another account concerning Father Shanks, who was one of the Christian missionaries working in the area. It is a story that Father Shanks would never tell. He described the attack on the Convent without mentioning his own name, as follows:

The tribesmen—great, wild, black beasts they were—came shooting their way down from the hills on both sides of the town.

They climbed over the hospital walls from all sides. The first group burst into a ward firing at the patients.

A 20-year old Indian nurse, Philomena, tried to protect a Moslem patient whose baby had just been born. She was shot dead first. The patient was next.

Mother Superior Aldetrude rushed into the ward, knelt over Philomena and was at once attacked and robbed. The Assistant Mother, Teresalina, saw a tribesman point a rifle at Mother Aldetrude and jumped in front of her. A bullet went through Teresalina's heart.

At that moment Colonel Dykes, who had assured us we would not be attacked, raced from his room a few yards along the terrace to get the Mother Superior out of danger, shouting at the tribesmen as he ran. But the Mother Superior fell shot, and Colonel Dykes collapsed beside her with a bullet in the stomach.

Mrs. Dykes ran from her husband's room to help him. She too was shot dead.

While this went on Mr. Gee Boretto, an Anglo-Indian, was killed in the garden before nine nuns. Then the nuns were lined up before a firing squad.

As the tribesmen raised their rifles a young Afridi Officer, who once studied in a Convent school at Peshawar, rushed in and stopped them.

At least there are living features of human quality in these incidents.

He had been told his men were raiding a Convent, and had run all the way from the town. That saved all our lives by a few seconds.

We did not find Mrs. Dykes until the following day. She had been thrown down a well.

We have another report, as follows:

A Pakistan Army convoy was sent to rescue us On the way from Baramula we stopped at the village of Boniyar to seek the staff of the World Wide Evangelistic Crusade Mission.

Then we have the following report:

In Baramula the townspeople told me of a young Muslim shopkeeper who had sacrificed his life rather than recant in his creed of religious tolerance. His martyrdom had taken place almost under the shadow of the convent walls, and in the memory of the devoted Kashmiris he was fast assuming the stature of a saint.

He—Mir Maqbool Sherwani—must have been a sort of Robin Hood character, from the stories the townspeople told me, championing peasants who could not pay their exorbitant taxes, pitching into the police when he found them beating up some luckless victim, bolstering up the resistance of the people against their many oppressions.

When the tribesmen invaded Kashmir and terrorized the countryside, Sherwani, who knew every footpath in the Valley, began working behind the lines, keeping up the morale of the besieged villagers, urging them to resist and to stick together regardless of whether they were Hindus, Sikhs, or Muslims, assuring them that help from the Indian Army and People's Militia was on the way. Three times by skilfully planted rumours he decoyed bands of tribesmen and got them surrounded and captured by the Indian infantry. But the fourth time he was captured himself.

On 22 December 1947, the Prime Minister of India handed over to the Prime Minister of Pakistan a letter in Delhi requesting the Government of Pakistan to deny to raiders (1) all access and use of Pakistan territory for operation against

Kashmir, (2) all military and other supplies, and (3) all other kinds of aid that might tend to prolong the present struggle.

I should like to draw the attention of the Council to that date, namely 22 December. We waited one week before coming here. The request was the same, that is that the country had been invaded. What was our request? This is what should be taken into account when there is an adjustment of values in the minds of members. Our territory had been invaded and the army was in a hopeless position, having been sent to Kashmir on less than twenty-four hours notice. I shall later disprove, if it is necessary, that there was any preparation on the Indian side. We have documents signed of their own will by the British Commander-in-Chief, the British Air-Marshal of the Indian Air Force and other personnel of the Indian army at that time, that the matter was never even broached by anyone before the question of defence arose.

I shall now state briefly what I fear I shall have to say again later.

In this context, if any other country, any other people—and it is not surprising that we did because we were the same people—had made a request of this kind, would it not have been answered by an ultimatum of war on their territory? And what did we ask? We accepted at face value the statements made that these were marauders.

The Security Council, even though it has sat on this for over nine years, cannot forget the facts of history and its obligations to the Charter. We made this moderate request for not giving this aid. I am sure that everyone around the Security Council table would say that a country so invaded has the right under normal practice to say, "We shall retaliate and we shall not withdraw until such and such a time." This was merely a request from one friendly Government to another, proving that we were not in a state of war even then.

Nothing happened after eight days. We would not have come here if any improvement had taken place. On 1 January 1948, India complained to the Security Council under Article 35 of the Charter. Even then we did not come here with the idea of using international forces to restrain, or imposing economic sanctions, or removing Pakistan from its seat in the Assembly, or anything of that kind. We came here to complain to the Security Council under Article 35 of the Charter, requesting that the Government of Pakistan be asked to prevent tribal and Pakistan nationals from taking part in the fighting in the State of Jammu and Kashmir and to deny to the raiders access to and use of its territory in operations against Kashmir, military and other supplies, and all other kinds of aid that might tend to prolong the fighting in Kashmir.

Are these the words either of a belligerent Government or of a Government with expansionist ideas, with the desire to follow its neighbour—as often pointed out, a neighbour far stronger than we are militarily today? Is this the language they would use?

We came here asking the Security Council to do these things, and it was a modest request. That is still what is pending before the Security Council. The issue that is pending before the Council is one that its members dare to evade only if they are prepared to defy the Charter. Everything else that has gone afterwards makes no difference. I go so far as to say that it makes no difference even if for argument's sake it is said that we were guilty of evasions after this incident, because international law is based upon equity. Anyone who comes here must come with clean hands, and I submit that our hands were clean.

What is more, we did not use our strong arm even at that time. We came here with a limited purpose. It may well be that, if we had forced that position at that time and not relied upon the processes that followed afterwards, perhaps this matter would have been resolved long ago and, what is more, we would not have been giving the material for the kind of ill-informed adverse propaganda that goes on everywhere. We would not have sown the seeds of doubt in the minds of people sitting around this table.

Therefore, I repeat this point, to which we shall come back again and again, that it must be planted firmly in your minds that the issue is aggression. The issue is invasion; it is a violation of territory. It is not necessary for me to prove the unquestioned sovereignty of India in regard to Kashmir. It is sufficient for me to prove that we were in possession—even, if you like, in a state of temporary possession—but I am not going to concede that. I want it to be shown on the record that I am not going to concede that, because we have suffered often here by accepting a hypothetical proposition and by saying, "Let us assume this for argument's sake", or saying, if A, B,. C and D happened, then we will do D". Then we discus D, everybody forgets A, B and C, and we are committed to course D. Therefore, I urge the Council to be extremely careful.

However, suppose, for example, that that was the position. I ask my South American friends to think of the doctrine on which their countries are based. We were in possession legally and in fact. They were invaders, and they had no standing in international law or international practice or according to the Charter, other than as wanton, naked aggressors into the territory of India.

While we made this complaint and it was being considered, what happened? I have not the records here, but I am sure the Secretariat will inform us that the Pakistan Government certainly must have had notice before 11 January, for ten days is a long time. On 11 January, the Foreign Minister of Pakistan, Mr. Zafrullah Khan, who is now a judge of the International Court of Justice—a jurist of standing—informed the Reuters correspondent that it was impossible for Pakistan to guarantee that no Pakistan nationals or other people passing through Pakistan should not go to Kashmir and "participate in the struggle for freedom." That is to say, we were two sister States brought together under the struggle of partition and with feelings of understanding. We agreed to the partition of India as the price of our freedom and also in order to save much bloodshed. Having done that, we came under the same Act of the British Parliament. Here in one part of the country is this rapine going on, and that is called a struggle for freedom. I say with great respect to them—and I do not want to be misunderstood—that we in India, I think, know something of the struggle for freedom. It was that great struggle for freedom that made the independence of Pakistan possible.

Now we turn to the most respectable of the journals of the world, that is, the *London Times.* On 13 January, that is, twelve days after we came here, it stated:

> That Pakistan is unofficially involved in aiding the raiders is certain. Your correspondent has first-hand evidence that arms, ammunition and supplies are being made available to the Azad Kashmir forces.

Here may I interpolate that my Government uses the words "Azad Kashmir" without accepting the connotation of the word "Azad". Although "Azad" means "free", we do not accept the term as meaning free Kashmir forces. They are enslaved Kashmir forces or whatever they are. But we have to use the language as it is given, and it should be understood that we do not regard it in its literal sense.

The *Times* went on to say that a few Pakistani officers were also helping to direct their operation and that, however much the Pakistan Government might disavow intervention, moral and material support was certainly forthcoming.

Both in the municipal laws of many countries and in international law, aiding and abetting either before or after the act is participation in the act itself. Let us assume for a moment that the units of the Pakistan Army were not operating, which we are not prepared to admit. The reason, of course, is that our army officers and their army officers were brother officers. They had met them in Kashmir. They knew them by their first names. They had all worked together in the same regiments before being divided by the partition. We do not want any documentation of this. Let us assume that there was not participation of the regular army, as it was suggested that there could not be. According to this *Times* correspondent, if there was no intervention, there was moral and material support. If the correspondent of the *Times* or of any other newspaper suggested this in an article in this way, that would not be sufficient for the conduct of affairs of nations, but it is the start of a whole series of incidents. Certainly it comes from a source that was not biased in our favour.

Now we come to the stage before the Security Council. We came here with a request that the aggression must be halted. If the Security Council were to tell us that in that letter we did not ask for more drastic action, that we did not ask for condemnation, that we did not ask for Pakistan to be declared an aggressor, we plead guilty. We plead guilty in the sense that we were not prepared and we had no intention at that time, nor have we now, to aggravate the situation. What we wanted was the undoing of the wrong rather than finding fault with somebody.

That is why in that letter, which is phrased in language that is not the language of war, we were simply asking from people who were committing rapine and murder to remove the weapons and not to let them go on with it. That is all we wanted.

Therefore, if the Security Council takes the view that generosity and moderation in these matters, and not asking for the extreme remedy, is a misdemeanor, then I am afraid we must plead guilty, but I hope that the time will not come when the United Nations takes that view.

So we came here on 1 January. On 15 January the Pakistan Government "emphatically deny that they are giving aid and assistance to the so-called invaders or have committed any act of aggression against India". This is the letter from the Minister for Foreign Affairs of Pakistan to the Secretary-General of the United Nations, Annex. 6 to UNCIP's First Interim Report, document S/1100.

I do not know whether the Security Council wants me to read the whole of it, but this is an official letter submitted as truth to the Security Council. And what does it say? It says:

> Pakistan Government emphatically deny that they are giving aid and assistance to the so-called invaders or have committed any act of aggression against India.

There are three statements there to which I would request the Security Council to address itself. One is the denial of giving aid and assistance, and the other is that they do not regard the so-called invaders, the rapine in Kashmir, as invasion of territory which is beyond their border. The third statement is that they plead not guilty to aggression. Either they deny the fact or they deny that indirect assistance is not aggression.

In either case, I say that it is a serious violation of all canons of international behaviour. The letter goes on to say:

> On the contrary and solely with the object of maintaining friendly relations between the two dominions the Pakistan Government have continued to do all in their power to discourage the tribal movement by all means short of war.

That is to say, not only did they deny it, but they came and told the Security Council that they were taking deterrent action to prevent it. I ask any member of the Security Council to tell me whether, even assuming that they were exclusively border raiders, whether it was possible for their army to march across long distances over Pakistan territory, whether they could get fuel anywhere, especially at that time, and where these trucks and this machinery came from, and where the officers came from and where the weapons came from?

If it is true that Pakistan could not stop the raiders from going across their country, by what right does this Member State come and say here "We shall take Kashmir under our protection", if they cannot prevent libertines and marauders from walking across their country and making themselves free with the resources that are there? And if a Pakistan Government were to tell us that they cannot stop a belligerent force from marching across that territory, by what right then can a Member State say that they are competent to take anybody over?

R.A

That means it is not a State; it is a territory over which anarchy prevails, if that is true.

But I submit that it is not true. The Pakistan Government at that time had an army which was in no way inferior to the Indian army. It was part of the Indian army. They had the division of the forces, according to their size, and so on, as decided by the British Government and the two States. They had all the material. What is more, what was required here was not militant action, but its denial.

Can anyone tell the Security Council that the march of people across long distances over Pakistan territory could not have been stopped by an organized Government? But if that is true alone, it would not be as strong as it is and as condemnatory as it is. But side by side with it stands all the statements I read out to you, where these Ministers call upon person after person, and they call them heroes; they call it liberation; they ask people to give assistance; they ask for volunteers; they ask for funds.

The Chief Minister, the Prime Minister of the Punjab, afterwards accused in certain financial matters, says that he spent this money on Kashmir. And not without evidence—there it is. Then in a subsequent part of the letter, the following is said:

> Governor-General of Pakistan (Krishna Menon: that is Mohammad Ali Jinnah, the founder of Pakistan) explained that he had no control over the forces of the Azad Kashmir Government or the independent tribesmen engaged in the fighting.

This is the same Mr. Jinnah who was asked by Lord Mountbatten: "How can you be responsible for these people?" Then he said. "I will call the whole thing off". I will tell the Council in what context later.

The document which I read is attached to the letter from the Minister of Foreign Affairs for Pakistan to the Secretary-General of the United Nations, and is to be found in paragraph 23(1) of Annex. 6 of UNCIP's First Interim Report, to which I referred a while ago. The UNCIP in its First Interim Report says:

> Another element, the significance of which had not been fully appreciated before the Commission's departure from the sub-continent, was the Azad Movement which constitutes an organized political and military body, is assisted by the Pakistan High Command and is engaged in active revolt against the existing Government. This Movement has co-operated since October 1947 with invading tribesmen and individual Pakistan nationals.

I submit that if I did not say anything else, and if I read out this paragraph where the United Nations Commission reports that the Azad Movement was an organized political and military body, assisted by the Pakistan High Command and engaged in active revolt against the existing Government, with which the Pakistan Government has co-operated since October 1947, before the complaint came here and which they have denied, and with invading tribesmen and individual Pakistan nationals, that one statement alone, coming from United Nations sources as a finding on fact—not an opinion but as a finding on fact—would, in my submission be adequate to prove the charge of aggression.

In view of the composition of the Security Council, I will ask the members to look at some evidence that comes from American sources. Russel K. Haight Jr., a former American soldier who served for two months in the Azad Kashmir Army, gave a secret interview to *The New York Times* correspondent, Robert Trumbull, in Lahore and stated that Pakistan had provided petrol. The following is the report:

> Mr. Haight also found Pakistan army personnel running the Azad Kashmir radio station, relaying messages through their own Pakistan army receivers (Krishna Menon: I repeat relaying messages through their own Pakistan army receivers) organizing and managing Azad encampments in Pakistan, and supplying uniforms, foods, arms and ammunition which, he understood, came from Pakistan army stores through such subterfuges as the 'loss' of ammunition shipments.. Mr. Haight characterized the Azad Kashmir Provisional Government, headed by Sardar Mohammad Ibrahim Khan as 'Pakistan puppets.' He

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> also deeply implicated high Pakistan Government officials, notably the Premier of the North West Frontier Province.

This is from *The New York Times* of 29 January 1948, and is also quoted by Lord Birdwood who has written a book on Kashmir, again not a friendly book to India. But those are the facts.

The next authority probably will be regarded as sympathetic to India, although many things have been written. Therefore, I will not read it. However, the representative of Australia would be interested to know what was said in the Australasian Continent about this. I do not have an Australian extract here, I could find many. But there is "Kashmir and the United Nations" by "Criticus" in the New Zealand Labour Party's weekly *The Standard* at Wellington, and it was published in India. It was carried on 28 November 1951 in *The Standard*. It reads:

> ...thousands of Muslim tribesmen equipped with arms by the Pakistan Government invaded Kashmir. This was obviously an act of open aggression...

I think it will be admitted that Lord Birdwood, with his background as a field marshal acquainted with India, had contact with the British officials and Pakistan, and this is what he says:

> At GHQ in Rawalpindi (Krishna Menon: that is the main army headquarters of Pakistan, as far as I know) in so far as they were prepared to discuss the matter, I was assured that no regular unit was moved before May:

That is, May of 1948.

> Yet a battery of mountain guns with an infantry escort were in action in an unsuccessful attack on Poonch on 17th March, while on the Indian side General Russell believed that regular (Pakistan) troops were involved in January.

General Russell was a British officer serving in the Indian Army. The document continues:

> He accordingly asked to be relieved of his command....

We readily agreed because we did not want British officers to fight British officers on the other side, and we did not want to involve the United Kingdom in any trouble between Pakistan and ourselves. Although General Russell was a very loyal and an extremely able officer, he asked to be relieved the moment he knew the Pakistan Army was in action. And what did the Government of India do? We would have been entitled—and I ask the representative of the United Kingdom to bear with me—to tell this man, "You have signed an agreement with the Indian Army, and this is ordinary military duty". We did not do anything of the kind. We relieved him, and we asked General Cariappa, as Commander-in-Chief, to take over. And General Cariappa, when the British Government left, was a brigadier. It was not as though we had ready-made officers to deal with these matters.

The statement adds that General Cariappa was convinced that at this stage Pakistan was using regular forces. General Cariappa, by the way, was an army officer who recently retired, and who must be very familiar to my Australian colleague, since he was High Commissioner for two or three years afterwards.

General Cariappa, the statement says, based his opinion on the fact that a number of prisoners of regular units had been taken. Now it cannot be said that the Pakistan Army sent a few persons to be taken prisoner for no reason. General Cariappa faced his Pakistan friends with the charge —and anyone who knows General Cariappa would understand how he does this. The statement adds:

> This he was able to do since an invitation to the Pakistan Armoured Corps 'Week' in Lahore came through to him from his old friend, Major General Iftikar, who was then commanding the 10th Pakistan Division in Lahore.

All these men had been brother officers in the same Army only a few days before.

Now this is the position. I should like to stop there so far as the invasion is concerned, and to come back to the political aspect. On 1 January we made our complaint. I read out to the Council a while ago what Sir Zafrullah Khan said on the eleventh. I read out all the denials between that date and Pakistan's reply. Nine years ago, on 1 January, we made this complaint, and I read out what the complaint was. On 17 January the Council passed a resolution. That resolution was based upon our letter and took into account Pakistan's reply. I propose to deal with this reply in the afternoon, because it requires a great deal of analysis.

Broadly speaking, what is that reply? It is a denial of the charges; it is a denial that they had given any assistance, it is a denial that there had been any aggression; and then it is a counterclaim on various other matters. But there is no principle of international law or international behaviour which says that if, in respect of a situation or particular problem, a complaint is brought, other misdemeanours in something else can be pleaded in bar. Therefore, I do not propose at this stage to go into the irrelevant intrusion of other complaints made by Pakistan. If the Security Council so desires, in its judgement, it is up to it, but so far as I am concerned I propose to keep to the subject of Kashmir. That itself will take us some time.

Therefore, the position is that we made certain complaints. We asked for certain remedies. Pakistan denied the facts that we alleged. A little later that denial was disproved, not only by what I have read out to the Council from outside sources but by the United Nations Commission itself. Then—I ask as a simple matter of analysis—what remains? We make a complaint; we assert certain facts; those facts would amount to aggression—and I presume the Security Council would not argue that they do not amount to aggression. If those facts amount to aggression and the answer is a denial that the facts took place, and if, afterwards, the Security Council finds that that denial was not correct, then what remains? All that remains is the aggression.

The defence is taken away, and therefore, in the letter that was put before the Security Council, the answer they gave was:

> The situation in their view is due to the aid which the invaders, consisting of nationals of Pakistan and of tribesmen from the territory immediately adjoining Pakistan from the north-west, are drawing from Pakistan for operations against Jammu and Kashmir, a State which has acceded to the dominion of India and is part of India.[1]

That is quoted in the reply, which goes on to say:

> They have requested the Security Council 'to call upon Pakistan to put an end immediately to the giving of such assistance which is an act of aggression against India'. They have also threatened that if Pakistan does not do so, the Government of India may 'enter Pakistan territory, in order to take military action against the invaders'.[2]

At this moment I want to refer to that last paragraph. I have read out what we said. Does that amount to a threat? What we said to the Security Council was, "We want to refrain from doing this. We may be driven to a position where we have nothing else to do, because invasion must lead to war and must spread." Therefore, what we said to the Security Council was not, "If you do not do this we are going to invade". That is not what we said. In fact, right through the Kashmir operations, at a great cost of human lives, we kept this war restricted. That is a story by itself.

Then comes the denial. The letter from the Minister for Foreign Affairs of Pakistan to the Secretary-General of the United Nations dated 15 January, 1948 says:

> Pakistan Government emphatically deny that they are giving aid and assistance to the so-called invaders or have committed any act of aggression against India.

That is a total, straight denial. They deny they are giving aid and assistance to the "so-called invader", or that they have committed any act of aggression. The document continues:

> On the contrary and solely with the object of maintaining friendly relations between the two dominions the Pakistan Government have continued to do all in their power to discourage the tribal movement by all means short of war.

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[1] S/1100, Annex 6, document, 1.

[2] *Ibid.*

This is elaborated in paragraph E(5) of document II, which is annexed to the letter in annex 6 of document S/1100. Paragraph E(5) is a reference to Kashmir, and states:

> That India obtained the accession of the State of Jammu and Kashmir by fraud and violence, and that large-scale massacre, looting and atrocities on the Muslims of Jammu and Kashmir State have been perpetrated by the armed forces of the Maharajah of Jammu and Kashmir and the Indian Union and by the non-Muslim subjects of the Maharajah and of the Indian Union.

Now let us assume that all these facts have substance. I do not for one moment say that they have; in fact, they are entirely untrue. But supposing they were true; what rights under the Charter does Pakistan have to go and punish somebody else for that reason? That is not the function of a neighbouring State. So that the aggression is justified by the fact that, first, India obtained an accession by fraud and by violence—something which we shall go into this afternoon—and that, therefore, they are entitled to invade. In other words, it is taking the law—if it was the law—into their own hands.

That is war. That is aggression. If one returns to that, then it will be a case of each side claiming right on its own side, and I say that, irrespective of the truth or otherwise of this matter, this entry would amount to aggression.

> Numerous attacks on Pakistan territory have been made by the Royal Indian Air Force, armed bands of the Indian Union in the State of Jammu and Kashmir.

This has been denied by Indian army officials, who were at that time British officers. No preparations were made for going to Kashmir; in fact, we lost all our men who went there on the first day.

The Security Council met for the first time on 6 January 1948; that is, we complained on 1 January, the Council met on the 6th and did some preliminary business, and Pakistan filed a reply on the 15th from which I have read. On 17 January 1948 the Council adopted the following Resolutions:

> Having heard statements on the situation in Kashmir from representatives of the Governments of India and Pakistan;
>
> Recognizing the urgency of the situation;
>
> Taking note of the telegram addressed on 6 January by its President to each of the parties and of their replies thereto in which they affirmed their intention to conform to the Charter;
>
> Calls upon both the Government of India and Pakistan to take immediately all measures within their power (including public appeals to their people) calculated to improve the situation and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation;
>
> And further requests each of those Governments to inform the Council immediately of any material change.

I request you, Mr. President, to take note of this phrase "to inform the Council immediately of any material change" because it appears afterwards:

> In the situation which occurs or appears to either of them to be about to occur while the matter is under consideration by the Council, and consult with the Council thereon.

My Government submits that from that day onwards, the basic ideas, the basic principles of the Security Council's resolutions have been violated by our sister State of Pakistan because the appeals to the people were in the opposite direction, as I pointed out. Nothing was done to improve the situation. More help followed and, what is more, as the years went on, this became, as was said by the Commission, a large-scale undeclared war; and, therefore, from the very beginning, if it is true that there was the regrettable behaviour of committing aggression and then trying to defend it, it was even worse when the Security Council called upon the party concerned to take no further action, and that is part of the answer which the Government of India has to give at this stage: to point out how, during these nine years, every one of these have been violated, and violations are continuing. That is why I said in the beginning that it is not sufficient to catch an argument somewhere at a cross-section and say that that is the picture. You have to look at what is behind, at what is going on, and what is likely to go on in the future if the words of the Foreign Minister are to be construed in their proper meaning.

Now, the "material change" to which I referred. On 20 January, three days later, the Security Council further considered the matter and this is its resolution:

> Considering that it may investigate any dispute or any situation which might, by its continuance, endanger the maintenance of international peace and security; that, in the existing state of affairs between India and Pakistan, such an investigation is a matter of urgency;
>
> Adopts the following resolution:..

I want to point out that this resolution of 20 January 1948 is one which binds the Security Council. It was a decision of the Council in regard to its own conduct.

> A. A Commission of the Security Council is hereby established, composed of representatives of three Members of the United Nations, one to be selected by India, one to be selected by Pakistan, and the third to be designated by the two so selected.
>
> Each representative on the Commission shall be entitled to select his alternates and assistants.
>
> B. The Commission shall proceed to the spot as quickly as possible. It shall act under the authority of the Security Council and in accordance with the directions it may receive from it.

That sentence gives all the weight that is necessary to the findings to which I previously referred. It is not as though the Commission's report were an unofficial document. It was in obedience to this mandate.

> ...It shall keep the Security Council currently informed of its activities and of the development of the situation.

I regret to say that, as a material matter, the Commission did not do so.

> ...It shall report to the Security Council regularly, submitting its conclusions and proposals.
>
> C. The Commission is invested with a dual function:
>
> (1). To investigate the facts pursuant to Article 34 of the Charter;
>
> (2) To exercise, without interrupting the work of the Security Council, any mediatory influence likely to smooth away difficulties; to carry out the directions given to it by the Security Council; and to report how far the advice and directions, if any, of the Security Council have been carried out.
>
> D. The Commission shall perform the functions described in Clause C:
>
> (1) In regard to the situation in the Jammu and Kashmir State set out in the letter of the representative of India addressed to the President of the Security Council, dated 1 January 1948, and in the letter from the Minister of Foreign Affairs in Pakistan addressed to the Secretary-General, dated 15 January 1948; and
>
> (2) In regard to other situations set out in the letter from the Minister of Foreign Affairs of Pakistan addressed to the Secretary-General, dated 16 January 1948; when the Security Council so direct...

So I submit that, even according to that resolution, any reference to all these irrelevant matters is outside the competence of this resolution. This was what we both accepted.

> E. The Commission shall take its decision by majority vote. It shall determine its own procedure...
>
> G. The Secretary-General of the United Nations shall furnish the Commission with such personnel and assistance as it may consider necessary.

These two resolutions may be taken together for consideration. And the Government of India accepted the resolution of 20 January. It accepted that resolution, despite its undisputed and irrevocable claim to sovereignty over this territory, in view of the fact that the situation was likely to lead to difficulties, in its faith in the United Nations—then perhaps more fresh than it is today, but still a faith that is founded in the Charter and the recognition that, whatever may happen in the intervening period, by and large truth catches up. Governments that have a responsibility for their own territories will not sit back and brook aggression from a neighbour. Therefore, we accepted these two resolutions and agreed to the setting up of the Commission in order that it might perform its dual function, and I submit that, in the performance of the first of these functions, the Security Council has before it the facts. It would take me many a long day to sift all the paragraphs, all the statements, all the questionnaires, the assurances given in great detail, but the fact does remain—and this is to be corroborated after—that the Commission did report that there was aggression, that there was material change in the situation—of which the Security Council was kept in the dark, and thereby, the Council, while it was passing resolutions and, in my humble submission, often, out of its generosity presumably, was taking the view that there are two sides to some kinds of truth. At that time changes were occurring in the situation, and it is not as though those changes stopped there, those changes still continue, so as to make it impossible to pursue the root of the matter on the lines that were thought of five years ago.

The Security Council, therefore, adopted this resolution and, having done so, went on to inquire about various things. Meanwhile the Security Council changed the title to the "India-Pakistan Question". We stated at that time that we had no objection to the use of any words which might be desired, but we maintained that the Kashmir question was the subject of the complaint.

On 21 April the Council adopted another resolution. That resolution was a modification, and it gave new instructions to the Commission providing for the withdrawal of the troops and the holding of a plebiscite, and the membership of the Commission was increased to five. On 5 May of that year, the Government of India formally informed the Security Council of its rejection of certain parts of this resolution, and that correspondence is contained in document S/734/Corr.1. India, however, expressed its willingness to confer with the Commission. The letter stated:

> The Government of India has given the most careful consideration to the resolution of the Security Council concerning their complaint against Pakistan over the dispute between the two countries regarding the State of Jammu and Kashmir. The Government of India regret that it is not possible for them to implement those parts of the resolution against which their objections were clearly stated by their delegation, objections which, after consultation with the delegation, the Government of India fully endorse.
>
> If the Council should still decide to send out the Commission referred to in the preamble of the resolution, the Government of India would be glad to confer with it.

That letter was signed by Mr. Nehru, the Prime Minister of India and Minister for External Affairs. Irrespective of the fact that we did not agree to the expansion, of the terms of reference the Government of India felt that it would be inhospitable and discourteous to the United Nations not to see the members of the Commission. There are cynics who say that that was where our troubles began, but it would be wrong to take that view, because if nations, out of risks and fears in this direction, would not enter into negotiations, then they would not be able to assist in the implementation of the functions of the Charter. But, and I say this in all sincerity, that carries with it the fact that one should not penalize those who necessarily do not stick to the letter of their communication, that is to say, they do not confine themselves to that, but are prepared to go a little further in exploration. Therefore, while we rejected this resolution and refused to accept it, we agreed to receive the Commission. At that time Mr. Gopalaswami Ayyangar, who was the Minister in the Indian Cabinet responsible for these affairs, spoke before the Security Council and he registered objections. I will not read the whole of his speech which was very long, but it is apparent from the preliminary discussion in January 1948 that it all turns upon what we agreed to. I have made no comment on this, but if I were to do so, I could say that it went to the very substance. Mr. Gopalaswami Ayyangar said:

> I would now proceed to review briefly some of the detailed provisions of the draft resolution presently under consideration. By way of anticipating a possible claim from the other side, I desire to say a few words on the question of accession... 'whether the State of Jammu and Kashmir is to accede to India or Pakistan'. The contention has been advanced (Krishna Menon:

> and this is our position) that the accession is for a temporary period (Krishna Menon: to do that it will be necessary to repeal an Act of Parliament) and a limited purpose, and when that period elapses and that purpose has been served, it ceases to be operative.[1]

That was the contention. Mr. Gopalaswami Ayyangar went on to say:

> 'We, on our side, repudiate this claim. (Krishna Menon: This was as early as 1948, so it was not an afterthought) The accession which took place on 26th October 1947 was both legal and lawful. It has been followed up by India in the discharge of all the obligations that her acceptance of the accession has imposed upon her. She has saved the Jammu and Kashmir State from disintegration. She is now resisting those who are attacking that integrity even today. She is protecting the State's large population from the unfriendly attentions of raiders from outside.
>
> The accession therefore subsists today and will subsist even after the fighting ceases and peace and order have been restored.[2]

That has been the basis of our position from 1948 onwards, it has never moved. Mr. Gopalaswami Ayyangar went on to say, "Until then, Pakistan has no constitutional position". He went on to make a statement which is very important from our point of view:

> After the fighting ceases, the whole of the State will have to come under one Government. By the whole of the State, I include also the area which is now under the control of the rebels and raiders. When the whole of the State thus comes under one administration—and that, the administration of the State of Jammu and Kashmir—India's garrisons will need to be planted at her outer frontiers on the west of the Jammu and Kashmir State. This planting is necessary for enabling India to discharge her obligations for the defence of the State which she has taken over under the Instrument of Accession..[3]

This is an undertaking which is not only sanctified by our Constitution, it is enjoined by an Act of Parliament of the United Kingdom, which is the basis of our Constitution. These obligations that we are carrying out were also agreed to by the Security Council. The Security Council at no time challenged either the sovereignty of Jammu and Kashmir or the validity of the accession, and that is the only thing that stays. Therefore, wherever this resolution goes into the question of treating these two countries as though they were two parties to a complaint, we have resisted that position and we have not subscribed to that part.

If it were necessary, I would go into the details of the 21 April resolution, but I do not think it is necessary because we are now covered by the resolution that followed The Commission was appointed by the 21 April resolution. We did not accept that resolution, but what did Pakistan do? Pakistan protested against the resolution without accepting it. It, however, chose Argentina as a member of the Commission on the same day. We objected to certain parts of it, but we agreed to receive the Commission. Pakistan protested and said they would not accept the resolution.

So if the resolution of 21 April has any value, then it depends upon the juridical argument: What is the status of a Security Council resolution under Chapter VI which makes recommendations. And they can have value as part of the process of conciliation only if the two parties agree. In the first instance, we did not agree entirely but we did agree to its function. Pakistan rejected it. Then they came in as a matter of conduct. By conduct they ratified parts of it, and therefore it has been necessary for the Security Council to examine the conduct and how far and into what regions this conduct travels. And so when, as was hinted—not said but hinted—in the observations of the representatives of Colombia and Cuba the other day; they were quite rightly concerned about the position of the Security Council—it is necessary to look into the substance of it and see what we agreed to and what we did not agree to.

As a result of this resolution, and in spite of the fact that both sides were unhappy about it, the Commission did go and it was well received in India. We did our best to make it acceptable in Kashmir and they spent a great deal of time.

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[1] Security Council Official Records, Third Year 285 Meeting, page 13.

[2] *Ibid.*

[3] *Ibid*, page 14.

II

Krishna Menon: Before I continue the observations I was making this morning, I should like to submit that the length of these observations does not arise from any particular desire on the part of my delegation to prolong these proceedings. It arises from the fact that this matter has not been before the Council for many years and, as I said this morning, there are very many new members—and the basic positions have to be understood if the Indian case is to be presented adequately. Therefore, if the Security Council desires to hear all the aspects of this matter as far as they are relevant, it will be necessary for my delegation to take the necessary amount of time. But I do not want to prejudice the Security Council by creating any feeling that the length of these observations arises from any other reason.

The President: May I say to the representative of India, on my own behalf, that, while the Philippines is a new member of the Security Council, the representative of the Philippines has taken it upon himself to read the documents in connexion with the question at issue. The representative of India need therefore have no fear that the representative of the Philippines is not conversant with the documents in this matter.

Krishna Menon: Of all the documents that have been circulated, I have read out only such relevant extracts as are necessary, leaving it to delegations, as the President has suggested, to read the documentation for themselves. But the fact that these papers are on file does not by itself ensure that the points in them will be brought out properly.

I was dealing this morning with the resolution of the Security Council adopted on 21 April 1948, and I pointed out that we objected to several paragraphs of it. But we were quite willing to confer and, as a result of that, the United Nations Commission started functioning.

It is not really relevant to my purpose to go into the activities of the Commission. But they met at Geneva on 16 June, and a study of the documents will reveal that at that time the Commission was concerned, and very much concerned, with one matter—and that was the matter of stopping the fighting. If the relevant paragraphs of the Commission's report were read, it would be quite clear that the concern of the Commission was somehow or other to bring about a cease-fire.

I read the following from the Commission's report:

> At the fourteenth meeting, it was agreed that the question of an immediate cease-fire should be explored and that the Government of India should be asked for its observations regarding the ways and means by which such a cease-fire might be brought about.[1]

The Commission went on to state:

> That its immediate objective was to bring about a cessation of hostilities rather than to deal with specific provisions contained in resolutions of the Security Council.[2]

Thus, the Security Council resolutions adopted earlier in the year had been disregarded by Pakistan in the sense that it had introduced other forces and heavy fighting had been taking place in the northern areas. What I said this morning referred very largely to the offensive in Western Kashmir. While that offensive was going on, however, and despite the injunctions of and the undertakings given to the Security Council that any material change in the situation should be reported, a considerable offensive was taking place in the Northern areas; I shall refer to the details of this latter offensive when I deal with the Northern areas.

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[1] Interim Report of the United Nations Commission for India and Pakistan, 9 November 1948, S/1100 para 45.

[2] *Ibid.* para 47.

As a result of this heavy fighting, the Commission was naturally concerned about the immediate objective of achieving a cease-fire. The Commission met in Geneva, and finally got to Karachi on 7 July. It was at that time that there occurred the new development which has been described as a "bombshell" in a book written by Mr. Korbel, who was then the Chairman of the Commission. I read from the Commission's report as follows:

> The Commission stopped in Karachi from 7 to 9 July. The principal representatives were received informally by the Minister for Foreign Affairs and Commonwealth Relations, Sir Mohammed Zafrullah Khan. He reviewed at length, and along the lines of the expositions made before the Security Council, the general background of the problem and the broader issues involved in the dispute between India and Pakistan. In the course of this interview—

And this is the relevant passage:

> The Foreign Minister informed the members of the Commission that the Pakistan Army had at the time three brigades of regular troops in Kashmir, and that troops had been sent into the State during the first half of May. Sir Mohammed Zafrullah Khan stated that this action had been taken as a result of the spring offensive by the Indian Army.[1]

The Security Council resolution had asked for information with regard to any material change in the situation. The above-mentioned information given by Sir Mohammed Zafrullah Khan was regarded as a material change in the situation and was communicated to the Security Council. I read again from the Commission's report:

> At the nineteenth meeting, on 20 July, a confidential cable was drafted and dispatched informing the Security Council of the presence of Pakistani troops in Kashmir. The Commission adopted a resolution requesting the Secretary-General of the United Nations to appoint a military adviser.[2]

It was the presence of these troops—which had been denied all along, but was admitted by the Foreign Minister of Pakistan when the Commission arrived in Karachi—that created a new state of affairs.

At a later stage, the Pakistan Government gave the reasons for this invasion.

The report continues:

> Sir Mohammed Zafrullah Khan stated that three main reasons had motivated the entry of Pakistan troops into Kashmir: protection of the territory of Pakistan from possible aggression by Indian forces; prevention of a *fait accompli* in Kashmir by the Government of India; and prevention of the influx of refugees into Pakistan.[3]

I submit that none of these reasons have anything to do with the people of Kashmir. We have heard a great deal about their future and their destiny, but if the protection of the territory of Pakistan from Indian forces does not sound like a preventive war I do not know what it is—that is the situation where a Member State gets the right to go into a neighbouring territory for fear that it might be attacked from that State. So protection of its territory, the first reason, is not a reason that is sanctioned by the principles of the Charter.

With regard to the prevention of a *fait accompli* in Kashmir by the Government of India, so far as the legal position is concerned, whether the Pakistan Government accepted it or not, it had been put before the Security Council; and if the view was that a *fait accompli* must not be brought about, then the Pakistan Government intended, in spite of the resolution of the Security Council, to decide this by force of arms, that is to say, to use its troops in order to prevent a *fait accompli.*

The third reason was to prevent the influx of refugees into Pakistan, and I would say that of all the reasons given this is the one that least holds water. After the partition there were seven or eight million people leaving in each direction. Refugees came from Pakistan into India and from India into Pakistan—one of those horrid scenes in our common history which I hope we shall be able to forget some day. But the idea of troops moving in to prevent the influx of refugees into Pakistan is difficult to understand. The only refugees who went into Pakistan presumably were those who preferred Pakistan as a home. Are we to understand that the Pakistan Government was going to prevent the influx of those refugees by the use of an army?

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[1] Interim Report of the United Nations Commission for ndia and Pakistan, 9 November 1948, S/1100, para 40.

[2] *Ibid* para 53.

[3] *Ibid* para 51.

So there are three reasons given, none of which in my submission have any substance.

This other matter to which I referred just now was a matter of serious concern to the Government of India and the Commission notes that. The Commission says—these are their findings—that Pakistan had not informed the Security Council of the presence of its troops in Kashmir because at the time they had been sent into the state the question had been entrusted to the Commission, whose daily departure was expected. This is Sir Zafrullah Khan's explanation. The matter put before the Commission immediately after its arrival in Karachi, in the view of the Foreign Minister of Pakistan—that is, the presence of foreign troops in Kashmir—did not raise the question of international obligations since Pakistan had never accepted any in regard to non-interference in Kashmir.

This view was repeated in Mr. Khan Noon's statement before the Security Council, that is to say that Pakistan had no international obligations in regard to non-interference in Kashmir. I submit this is a violation of the provisions of the Charter. Therefore the explanation that is given, that is, that the Commission "is coming here so we will not let it know", when the Security Council had asked six months before that these things should not be done, does not hold water. And what is more, this would have been more plausible if in the course of these six months there had been no denial. Then, to buttress this argument, the Foreign Minister went on, says the Commission, to dwell at length on economic and strategic considerations. Now if it is right to lead an army into a country for economic and strategic reasons, then I think that the causes of his negation are even more justified.

The Commission goes on to say:

> The Minister for Foreign Affairs ... argued that India, if it had control over Jammu and Kashmir, would be in a position to divert all five rivers of the Punjab, that is, Chenab, Jhelum, Beas, Sutlej and Ravi, the last three being already under Indian control, and thus could reduce to a desert one-third of the irrigated areas of West Punjab;[1]

I think the most amazing paragraph is paragraph 68 of this report which says that the Foreign Minister pointed out:

> ... that, if the Radcliffe Award had followed the terms of reference under which the Boundary Commission had operated and had included all Muslim majority areas in West Punjab, the Pakistan boundary would have been much further to the east.

Now what is the implication of that paragraph? The Commission pointed out that Lord Radcliffe had given an award and that award, in this particular respect, was not satisfactory to Pakistan and in many respects it was not satisfactory to us. And here the Foreign Minister is saying that if the Radcliffe Award had been given the other way then of course the question of Kashmir would have been further east and the question of direct access would not have arisen. Therefore, by implication, this invasion is a method of modifying the Radcliffe Award by force. At the time it became public knowledge—we knew all the time that it was going on—that Pakistan had invaded Kashmir, this created a great deal of feeling in India, and the Prime Minister made reference to it in some speeches he delivered, against which Pakistan protested. And the response of the Commission is significant in this matter to show how it felt about it. At the thirtieth meeting on 6 August the Commission considered a telegram received from the Government of Pakistan protesting against a speech delivered by Prime Minister Nehru on 25 July in Madras and asking what measures were contemplated by the Commission. The Commission felt that in view of the presence of Pakistani troops in Kashmir any representation to the Government of India about this speech of the Prime Minister would be ill-advised and therefore the receipt of the telegram was acknowledged without comment. The Commission exchanged views concerning alternatives—this is another significant part—to a plebiscite, keeping in mind that the study of the alternatives could not be seriously undertaken without the consent of the Governments of India and Pakistan.

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[1] Interim Report of the United Nations Commission for India and Pakistan, 9 November 1948, S/1100, para 67.

During these same meetings, the Government of India and the Government of Pakistan produced before the Commission the various conditions which they regarded as necessary for establishing a cease-fire. The Pakistan position, so far as I understand it, subject to correction, as set out in paragraph 50, was that a cease-fire should come after arrangements for a political settlement—a very familiar argument in the United Nations. The principles which the Government of India regarded as necessary for agreeing to a cease-fire, as set out in paragraphs 46, 47 and later, were the following. When the Commission, under its Chairman, Mr. Graeffe, interviewed the Prime Minister, the following points were submitted on behalf of the Indian Government: (1) The regular Pakistani forces should be withdrawn from the State of Jammu and Kashmir, (2) Indian forces should remain along fixed lines and occupy certain advanced strategic positions and (3) the evacuated territories situated outside of the fixed line should be provisionally administered by existing local authorities, or, if necessary, by local authorities to be designated by the Commission, and should be supervised by observers of the Commission, but remain under the sovereignty of the State of Jammu and Kashmir until the final settlement of the dispute between India and Pakistan.

Therefore, these principles, which were put forward ultimately and which to a very great extent found favour in the Commission, were based upon the idea of the sovereignty of the State, that is to say that it is indivisible, that its parts cannot be taken by invasion, that the Indian forces have the right and the duty of protecting this area and that the invaders must evacuate. That is the crux of the case: the invaders must evacuate the territory and, if it is necessary, there should be local authorities there—not governments but merely local authorities—for the maintenance of law and order under the supervision of the Commission. That was the position, as may be seen from the resolutions that were adopted later.

As a result of these discussions, the Commission, having put to both the Government of Pakistan and the Government of India the various points of view, and in view of Pakistan's objections as set out in the report, at its meeting on 13 August finally formulated the resolution which forms the basis of the Kashmir question so far as the Security Council is concerned. This is the well-known resolution of 13 August which brought about a cease-fire. As I stated a short while ago, the concern of the Commission at that time was to a large extent the establishment of a cease-fire so that the fighting might be stopped. I shall not read out the resolution, as it is a very long one, but there are certain points of it to which I must draw attention. This resolution was referred to in the statement by the Foreign Minister the other day, and I believe that in the interests of clarity and accuracy one ought to draw attention to it.

The representative of Pakistan stated:

> The main provisions of this international agreement for a plebiscite are:
>
> (i) Cease-fire and demarcation of a cease-fire line. (Krishna Menon: We have no quarrel with that.)
>
> (ii) Truce agreement providing, *inter alia*, for (a) withdrawal of tribesmen and Pakistan nationals... (b) withdrawal of Pakistan troops and the bulk of the Indian Army... (c) a plebiscite to be conducted...

This might appear to be of very little importance if one did not know the history of this matter, because this resolution is really conceived in three consecutive parts. The part referring to the plebiscite is not part II but part III, which has very considerable relevance to the whole approach to this problem. Part I is concerned only with a cease-fire. It places responsibility on the High Commands of the Indian and Pakistani forces "to refrain from taking any measures...". I shall not read out the whole resolution. It establishes the cease-fire as between the two High Commands. Part I, paragraph E, is relevant in this connexion:

> E. The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

Neither before 13 August nor after 13 August until the present time, as the Council will come to see when we deal with present conditions, has there been any appearance that this has been done by the Government of Pakistan as reflected in the public opinion of Pakistan. This is not to say that the peoples of Pakistan are against the peoples of India, but there has been a campaign of hatred and a campaign of a holy war against India.

Now that the cease-fire has been established, so far as the Government of India is concerned that is an agreement into which it has entered and which should be supervised by an international body of observers.

Part II relates to the truce agreement. The plan of this programme is that first there should be a cease-fire, then there should be a truce agreement and then there should be a third part. Part II is divided into three sections: A, B and C. Paragraph 1 of section A states:

> 1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

That is to say, one of the principles laid down in this resolution was that a material change in the situation had been brought about, and as a result of that it was necessary as one of the first conditions of the truce that there should be a withdrawal of the troops of Pakistan from the territory of Jammu and Kashmir.

The second paragraph states:

> The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting.

Our submission is that there has been no withdrawal of these nationals to the extent that is required in this matter. What are called other armies in Kashmir are under the control of the Pakistan command. They are officered by Pakistan officers, and their administration is under Pakistan control. Therefore, to say that paragraph 2 of the truce agreement has been carried out is not accurate.

The third paragraph states:

> Pending a final solution, the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

This is an integral part of the conditions, of the principle for which India asked and which is incorporated by the Commission in its resolution. What is the position today? I shall deal later with the political conditions, but there are no local authorities. The administration in that area is directly under Pakistan administration through its own officials, and the authorities in Kashmir are controlled from Karachi. So there is no such thing as local administration, much less supervision by the Commission. So that part also has not been carried out.

Now we come to some of the other more important matters. Section B begins with "When". It states:

> When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II A 2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the

> State of Jammu and Kashmir, and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of their forces from that State in stages to be agreed upon with the Commission.

That is to say, it is only when the Commission has notified that the tribesmen and Pakistani nationals have withdrawn and, secondly, when the conditions on which we came here, namely, an invasion, have disappeared, it is at that time that the Government of India must withdraw the bulk of its forces. That was the position taken in August. It was something undertaken on the basis of conditions.

> Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain, within the lines existing at the moment of the cease-fire the minimum strength of its forces which, in agreement with the Commission, are considered necessary to assist the local authorities in the observance of law and order.

Therefore, this Part II B is a recognition of the fact that the security of the State is the concern of the Government of India. That is again amplified in the phrase that follows in paragraph 3:

> The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within their power to make it publicly known that peace, law and order will be safeguarded...

They were given the responsibility for law and order and the responsibility for security. What is more, it was a condition that the Indian forces should withdraw only when all others had withdrawn, and the reason for bringing the case had disappeared. That is set out in Section B.

In the discussions that have gone on in this Council after this period—1952 and subsequently—these matters have been put on one side. The reason is not hard to seek, because we were confined to one problem, a problem that could be implemented only after this came into effect.

However, so far as the Government of India is concerned, in spite of this condition in Section B, we have withdrawn a considerable part of our forces. There is an army in Kashmir, and, so far as Kashmir—which is not under foreign occupation—and as far as India is concerned, that is the Indian Army. It is the Kashmir Army. It could no more be called a foreign army than the British Army would be called a foreign army in Lancashire. It is a part of the army and the local militia that the Kashmiris are entitled to have. In spite of the fact that these foreign nationals are there, in spite of the fact that the aggression has not been liquidated, we have withdrawn a considerable part of our troops.

The Foreign Minister made some arithmetical calculations and told us that India had 80,000 troops in this area and, what is more, that that constituted one-twelfth of the population. I think that if we applied these mathematics in one place it might be useful to apply them in some other place. There are today forty-five battalions in those outposts around "Azad Kashmir" and there are only half a million people there. Therefore the Security Council can work out the mathematics in that. I am not referring to other areas at the moment; I am referring to the half million people in what is called the Azad area, where there were, at the time when the Commission was investigating, thirty-two battalions, which have now become forty-five battalions. Therefore, if we face the question of having troops, that is the position.

On this matter, I also wish to submit that Kashmir is the northern extremity of India. The Indian Army is deployed in the various sectors of the country, and this is one area where it has to function, not only for the protection of Kashmir and all that is involved therein but because it is the place where it normally would be located.

If we are to take this into account, then, as I shall point out later, we shall have to take into account the divisions of the Pakistan Army that are located about five, ten and twenty miles from our border. That is, if it is right to have the Pakistan Army in Abbottabad or in Murree or in any of these areas, then it is necessary for the Indian Army to be held somewhere. Therefore, the idea that this is an occupation, as it has been represented to the Council, is a total misnomer.

Then we come to Part III, which is the crucial part. Part III states, and I would request you, Mr. President, to give your very careful attention to this:

> The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

The commitment about a plebiscite is usually spoken of as though it were the law of the Medes and Persians, but what does it amount to? It amounts to an expression of a wish on the part of the two Governments. The expression of a wish is far less than what may be called an international obligation. However, I do not wish to argue that point. But take the other one, that it should be carried out upon the acceptance of the truce agreement. No truce agreement has been signed, because Pakistan armies have not vacated and, what is more, there are continued violations.

As I shall point out later, large numbers of conditions have changed under which it is no longer possible to consider the matter in these terms. So any suggestion that the Government of India—and this is the burden of the apprehension about us, and there is no further charge—has a commitment that it is not honouring, I deny totally. So far as we are concerned, the commitment is for the acceptance of a truce agreement. It is not to hold a plebiscite but to enter into consultations.

First of all, there is no truce agreement. Therefore, if number two does not happen, number three is out of court. Number one, the cease-fire, we have performed. Number two is the truce agreement. I have given the reasons why the truce agreement is not being carried out. Therefore, number three means that it is only when number two has been accomplished that number three comes into the picture at all. The character of number three is not just a matter of taking a plebiscite, but that the Government enters into consultations.

This means that the two parties shall enter into consultations in the same way, shall we say, as was arranged in connexion with elections in Indo-China. That is all there is to it. Those consultations have taken place, even without a truce agreement, and nothing has come of them.

Now this resolution was not accepted by Pakistan. We accepted this resolution, and as I told the Security Council a while ago, we had previously set out the principles that should be embodied. While the resolution was not one that totally met our point of view, with a view to resolving the position the Government of India accepted this resolution which was adopted by the Commission on 13 August.

But still there was no cease-fire. The fighting was going on in the northern areas. It was becoming more intense. The Commission reported to the Security Council and made further efforts.

It is essential in reading the document of 13 August, which is a resolution of the Commission, to appreciate that this document should be read along with the assurances given in writing by the Commission to the Government of India, because they form one document. If you like, that is a contract; these are the warranties. This document cannot be regarded as isolated from the context of the assurances given.

Those assurances were set out in a letter that was sent by the Prime Minister of India to the Commission on 20 August 1948. May I say here that the facts of this letter were not private, as is sometimes hinted in some newspapers, between the Commission and the Prime Minister. They were published and in the next stage of negotiations, Pakistan and India came to an agreement on the resolution of 5 January.

Pakistan, if it agreed to that, had cognizance of these conditions. That letter says the following:

> On the 17th of August, my colleague, the Minister without Portfolio, and I discussed with you and your colleagues of the Commission now in Delhi the resolution which you had presented to us on the 14th instant. (Krishna Menon: that is, the resolution that had been previously adopted by the Commission and presented to us). Then, a little further on, it goes on to say:

> During the several conferences that we had with the Commission when it first came to Delhi, we placed before it what we considered the basic fact of the situation which had led to the conflict in Kashmir. This fact was the unwarranted aggression, at first indirect and subsequently direct, of the Pakistan Government on Indian Dominion territory in Kashmir. The Pakistan Government denied this although it was common knowledge. In recent months, very large forces of the Pakistan regular army have further entered Indian Union territory in Kashmir and opposed the Indian army which was sent there for the defence of the State. (Krishna Menon: which is envisaged by this resolution).

> This, we understand now, is admitted by the Pakistan Government, and yet there has been at no time any intimation to the Government of India by the Pakistan Government of this invasion. Indeed, there has been a continual denial and the Pakistan Government have evaded answering repeated inquiries from the Government of India. In accordance with the resolution of the Security Council of the United Nations adopted on the 17th January, 1948, the Pakistan Government should have informed the Council immediately of any material change in the situation while the matter continued to be under the consideration of the Council. The invasion of the State by large forces of the regular Pakistan army was a very material change (Krishna Menon: I am sure the Council will agree.) in the situation and yet no information of this was given, so far as we know, to the Security Council.

> The Commission will appreciate that this conduct of the Pakistan Government is not only opposed to all moral codes as well as international law and usage, but has also created a very grave situation. It is only the earnest desire of my Government to avoid any extension of the field of conflict and to restore peace, that has led us to refrain from taking any action to meet the new situation that was created by this further intrusion of Pakistan armies into Jammu and Kashmir State. The presence of the Commission in India has naturally led us to hope that any arrangement sponsored by it would deal effectively with the present situation and prevent any recurrence of aggression.

I would like the Council to take note of that sentence, that is to say, the fact that the Commission was intervening in this matter and brought this resolution to us. They had reason at that time to think that the aggression would be terminated, but nothing of that kind happened. The letter continues:

> Since our meeting of the 18th August, we have given the Commission's resolution our most earnest thought. There are many parts of it, which we should have preferred to be otherwise and more in keeping with the fundamental facts of the situation, especially the flagrant aggression of the Pakistan Government on Indian Union territory. We recognize, however, that, if a successful effort is to be made to create satisfactory conditions for a solution of the Kashmir problem without further bloodshed, we should concentrate on certain essentials only at present and seek safeguards in regard to them.

There then follow the safeguards which are very material:

> (1) That paragraph A.3 of Part II of the resolution should not be interpreted, or applied in practice, so as (Krishna Menon: that is the paragraph with regard to local authorities.)
>
> (a) to bring into question the sovereignty of the Jammu and Kashmir Government over the portion of their territory evacuated by Pakistan troops, (Krishna Menon: that is to say, that neither the invasion by Pakistan nor the fact that they evacuated it under orders from the Commission would in any way affect the sovereignty of the Jammu and Kashmir Government. That was the condition we made.)
>
> (b) to afford any recognition of the so-called 'Azad Kashmir Government', or
>
> (c) to enable this territory to be consolidated in any way during the period of the truce to the disadvantage of the State.

That is what has happened since: the portion being administered from another place. It then goes on:

> (2) That from our point of view the effective insurance of the security of the State against external aggression, from which Kashmir has suffered so much during the last ten months, was of the most vital significance and no less important than the observances of internal law and order, and that, therefore, the withdrawal of Indian troops and the strength of Indian forces

maintained in Kashmir should be conditioned by this overriding factor. (Krishna Menon: that is to say, we emphasized the point that we have the responsibility for security). Thus at any time the strength of the Indian forces maintained in Kashmir should be sufficient to ensure security against any form of external aggression as well as internal disorder.

(3) That as regards Part III (Krishna Menon: that is, ascertaining the will of the people) should it be decided to seek a solution of the future of the State by means of a plebiscite, Pakistan should have no part in the organization and conduct of the plebiscite or in any other matter of internal administration in the State.

Therefore, it was not as though there were two peas in a pod and two people with some equal jurisdiction over this. The plebiscite was merely a concession, merely a method, whereby some peaceful settlement could be brought about. Therefore, we made the reservation that this should be done. Then the Prime Minister went on to say:

If I understood you correctly, A.3 of Part II of the resolution does not envisage (Krishna Menon: this is the Commission's position being taken) the creation of any of the conditions to which we have objected in paragraph 3(1) of this letter. In fact, you made it clear that the Commission was not competent to recognize the sovereignty of any authority over the evacuated areas other than that of the Jammu and Kashmir Government.

I ask the Council to take notice of this; that is, the Commission says that they have no authority to recognize any sovereignty other than that of the Jammu and Kashmir Government. In the face of that, how can the Security Council contemplate with equanimity the position that part of the territory has been invaded, usurped, annexed and assimilated? The next paragraph says the following:

As regards paragraph 3(2), the paramount need for security is recognized by the Commission, (Krishna Menon: that is to say, the sovereign function of defence is placed upon India) and the time when the withdrawal of Indian forces from the State is to begin, the stages in which it is to be carried out and the strength of Indian forces to be retained in the State, are matters for settlement between the Commission and the Government of India.

That is to say, there is no mention of the words "the Government of Pakistan" so far as that is concerned.

The next paragraph reads as follows:

Finally, you agreed that Part III, as formulated, does not in any way recognize the right of Pakistan to have any part in a plebiscite.

Then the Prime Minister concludes:

In view of this clarification (Krishna Menon: these are all clarifications given by the Commission, and I shall read out the confirmation in a moment) my Government, animated by a sincere desire to promote the cause of peace and thus to uphold the principles and prestige of the United Nations, have decided to accept the resolution.

To complete this chapter, may I now be permitted to read the acceptance of the Commission:

I have the honour to acknowledge the receipt of your communication dated August 20, 1948, regarding the terms of the Resolution of the United Nations Commission for India and Pakistan which the Commission presented to you on the 14th of August 1948.

The Commission requests me to convey to Your Excellency its view that the interpretation of the resolution as expressed in paragraph 4 of your letter coincides with its own interpretation, it being understood that as regards point (1) (c) the local people of the evacuated territory will have freedom of legitimate political activity.

In this connection, the term 'evacuated territory' refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command.

The Commission wishes me to express to Your Excellency its sincere satisfaction that the Government of India has accepted the resolution and appreciates the spirit in which this decision has been taken.

Therefore, here are assurances given and discussed for a very long time; clarifications sought and given; and, in categorical terms, the letter signed by the Chairman of the Commission on 25 August, which completes the resolution of 13 August. Therefore, I submit that the Security Council in considering this resolution—I will come to the next one in a moment—has to read it along with these clarifications and assurances. Otherwise, the Security Council has said to us that we are to accept one part of what the Commission says, and not the other. Our acceptance of this document was along with those clarifications. Pakistan did not accept this.

I should also add that whatever is said here also refers to the Northern Territories—that is to say, the territories where, as I shall point out later, owing to the instrumentality of the local commanders, who are not local people at all, affiliations have been received and a considerable amount of fighting has taken place. In regard to these Northern Territories, the Prime Minister said:

> The authority of the Government of Jammu and Kashmir over this region as a whole has not been challenged or disturbed, except by roving bands of hostiles, or in some places like Skardu which have been occupied by irregulars or Pakistan troops. The Commission's resolution, as you agreed in the course of our interview on the 18th, does not deal with the problem of administration or defence in this large area. We desire that, after Pakistan troops and irregulars have withdrawn from the territory, the responsibility for the administration of the evacuated areas should revert to the Government of Jammu and Kashmir and that for defence to us.

That is to say, in regard to these problem territories of Baltistan and Gilgit, and all those areas, there is a difference—a difference between the local authority issue in West Kashmir, where it was suggested there were some local movements, and this one. And the Government also said:

> The only exception that we should be prepared to accept (Krishna Menon: they did not accept it, but they were prepared to do so) would be Gilgit. We must be free to maintain garrisons at selected points in this area for the dual purpose of preventing the incursion of tribesmen, who obey no authority, and to guard the main trade routes from the State into Central Asia.

India has considerable trade through these areas into the Central Asian region and the lower provinces of Asia, of Russia, of China and of Tibet.

In answer to this northern areas question, similarly, the Commission agreed. I shall read out the paragraph which relates to this agreement:

> The Commission wishes me to confirm that, due to the peculiar conditions of this area, it did not specifically deal with the military aspect of the problem in its resolution of 13 August 1948. It believes however, that the question raised in your letter could be considered in the implementation of the resolution.

The Commission, therefore, tried to make a further effort, because the cease-fire could come about only if there were agreement of the two sides. It met in Geneva in September, prepared its procedure, and then reported to the Security Council in Paris. Then it proceeded to the peninsula and produced a series of proposals on 11 December. And those proposals of 11 December, which were passed by the Commission in its private sitting, were communicated to the Governments of India and Pakistan. India accepted them on 23 December, and I believe that Pakistan accepted them on 25 December.

So, by 25 December, we had a situation where the resolution of the Commission, as passed in its private sitting on the 11th, was accepted by both Governments, and that became the resolution of 5 January. In this matter a different procedure was followed. That is to say, the resolution was first set up by the Commission and put to the two Governments; their agreement was obtained, and it was formalized.

This is a convenient moment to point out how we stand with regard to this, because these are the two resolutions to which we have given any agreement at all—that is the resolutions of 13 August and of 5 January. My submission is that so far as those resolutions are concerned they stand by their texts and by their intention. That is the first point. The second point is that they should be read together and their sequence taken into account. The third point is that these resolutions are also to be read along with and to be conditioned by the assurances I have read out to the Council and the other assurances that are given by the Commission with regard to the resolution of 5 January, which are printed in *aide memoires* which were submitted to the Commission and which are in the records of the Security

Council. It was stated therein:

> The Prime Minister emphasized, (1) that if the Government of India, were to accept the Commission's plebiscite proposals, no action could be taken in regard to them until Parts II and III of the Commission's resolution of 13 August had been fully implemented,

That is one of the things that is said in regard to the resolution of 5 January:

> (2) that in the event of Pakistan not accepting these proposals, or having accepted them, not implementing Parts I and II of the resolution of 13 August, the Government of India's acceptance of them should not be regarded as in any way binding upon them (Krishna Menon: I shall come back to this in a moment.)
>
> (3) Part III of the Commission's resolution of 13 August provided 'that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultation with the Commission to determine fair and equitable conditions whereby such free expression will be assured.'... While the Government of India adhered to their position in regard to a plebiscite, they had pointed out that, in view of the difficulties of holding a plebiscite in present conditions in Kashmir, other methods of ascertaining the wish of the people should also be explored. The Commission had itself recognized the difficulties of carrying out a plebiscite in Kashmir. The Government of India feel that the exploration of other methods should not be ruled out.

For the present purposes I am satisfied to put in these *aide memoires* for the information of the Security Council. If, in further debate, there should be any challenge upon them, then I would have to argue what is in these *aide memoires.* But the main thing is this:

> (2) that in the event of Pakistan not accepting these proposals, or having accepted them, not implementing Parts I and II of the resolution of 13 August—

and our submission is that Parts I and II of the resolution are not implemented, and that therefore the Government of India cannot be regarded as being bound by those resolutions, because that is the consecutive character. It is a concertina resolution Unless (A) is accomplished, (B) cannot be undertaken; unless (B) is accomplished, (C) cannot be undertaken. Apart from what (C) means—something to which I have referred—(B) has not been implemented, and so unless there is a truce, unless there is evacuation, how does the Security Council even contemplate the idea of anything in the nature of an assessment of the will of the people in the occupied areas of Pakistan, with forty-five battalions of these forces, the entire army of Pakistan, right up on our frontiers? And when I deal with the military preparations in that area, the Council, I hope, will begin to sit up and take notice. That has nothing to do with the welfare of those people. The people in the "Azad" areas the people in Gilgit the people in Chitral and the people in Baltistan—they do not go around in aeroplanes, and the Council will be bound to enquire what is the purpose of the airfields and airstrips in these areas.

I think it would be regarded as unfair to the Council if I did not refer to the fact that this resolution of 5 January deals, in the main, with the implementation of part III—that is, the resolution of 13 August, which deals with the cease-fire and the truce and leaves the plebiscite in one paragraph. What the resolution of 5 January does is to elaborate the ways in which a plebiscite should be taken. Practically the whole of this resolution deals with the methodology of this plebiscite, but it is not as though it is laid down categorically. There are so many "ifs" and "whens" in this which are integral to the commitments made by India. The Council will bear with me if, on behalf of the Government of India, I try to clarify this matter, because it is a serious thing to tell a Government that it is not honouring its commitments; and it can only honour the commitments which it has undertaken. A commitment does not become a commitment by an assumption of what has gone before.

Now, what is this resolution of 5 January 1949? It reads as follows:

> The United Nations Commission for India and Pakistan, having received from the Governments of India and Pakistan, in communications dated

23 December and 25 December 1948, respectively, their acceptance of the following principles which are supplementary to the Commission's resolution of 13 August 1948:

> 1. The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.

As everybody will notice, it says "will be decided"—a simple futurity. It does not say "shall be decided".

The next paragraph governs this one; paragraph 2 of this resolution of 5 January governs the first one:

> 2. A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of the Commission's resolution of 13 August 1948 have been carried out.

and that "when" still remains "when". And I shall submit later on that the "when" not only remains so, but it is no longer possible

> ...and arrangements for the plebiscite have been completed.

Paragraph 3 of the resolution deals with the functions of the Plebiscite Administrator.

I must say a word about the Plebiscite Administrator. Our position in this matter was that we did not like it, but that there was really no objection to a man working out the details if he wanted to so that he could put them into operation when the time came. We had no feeling about people coming into the country or seeing things for themselves and so, when it was pressed upon us, we agreed to a Plebiscite Administrator being appointed subject to all this expert advice.

Now we come to paragraph 4:

> (a) After implementation (Krishna Menon: and I ask the Council to take note of these words) of Parts I and II (Krishna Menon: the previous paragraph said when) of the Commission's resolution of 13 August 1948, and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine in consultation with the Government of India (Krishna Menon: not with the Government of Pakistan) the final disposal of the Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite.

There is one verbal implementation which I should like to make. It has always been understood that the expression "disposal", used in this resolution, means, to the Government of India, "disposition". The Council will see that that is its meaning if it looks at the word "disposition" used in other places.

So paragraph 4, again, reiterates this fact, that nothing can happen until Parts I and II have been carried out. Part I has been signed, although there have been serious breaches of the cease-fire—one of them of a serious character which developed into a miniature battle.

Hence, the whole of the resolution of 5 January is concerned with the minutiae of the plebiscite, but even in that, it makes it quite clear at what time it will be taken. This is a plan of action. It is a blueprint. But you cannot operate it, you cannot pull the trigger on it until Parts I and II are in operation. Part I is in operation; therefore, there is no fighting—and, so far as we are concerned, it will remain in operation. But Part II is not in operation; and, what is more, the conditions that could have made Part II in operation have been breached before this without the knowledge of the Security Council and without conveying the information, and afterwards, and is being breached continually. In fact, a division of Kashmir, which is wrong both *de jure* and *de facto*, has taken place. This is a sheer violation of all the commitments made by the Government of Pakistan to the United Nations. That is the limit of our commitments in this matter.

That finishes the first part of my submission to the Security Council; that is, it takes us to what our commitments are. So far as I can remember, three or four resolutions were adopted by the Security Council before 13 August 1948 and 5 January 1949. I think that we should consider those two resolutions as one plan. The Security Council will appreciate, when it has gone through the papers and pondered, that all the previous resolutions are absorbed by these; the resolutions of 13 August and 5 January really take into account all the previous resolutions. It is the submission of my Government that all the resolutions which may follow can only flow from these. Therefore, the binding conditions, whether they bind us or whether they are conditional bindings, or provide for denunciation and escape, all have to be taken into account. The only things that bind us in regard to Kashmir, so far as the Security Council and the world are concerned, are these resolutions with all the conditions I have mentioned. And I would say that, while we are not a member of the Security Council, as a Member State which has earnestly tried to discharge its solemn obligations to the international community, the Council will think many times before it is led even to think, let alone express a view, that the Government of India has in some way tried to get round international commitments.

I shall try, in the course of my next submission, to deal with the matter of what a commitment is, what a decision is, and what a recommendation is.

One gathers the impression that there is some desire to know about the Constituent Assembly since, in our view erroneously, the Council seems to persist in the idea that this is some world-shaking matter. I must confess that the atmosphere of crisis has been created, or some sort of D-Day or zero hour, for 26 January. But whatever may be the background which we are able to understand, we have the duty to point out what the facts are, and I have therefore decided to change the arrangement of my presentation. Logically, this should come much later, but in order to suit the convenience of the Council, and because, I want to tell you, I am not in a fit condition to sit through a third session continuously, I have changed the order of my presentation. Therefore, I propose now to take up first of all the claim—and by claim I mean the title or the argument, or the case, or whatever it may be, that Pakistan may have for Kashmir. Secondly, I shall deal with the accession, and then with the Constituent Assembly, because if I do not deal with accession, the Constituent Assembly becomes unintelligible. I shall be able to do all that this afternoon. I think it is very necessary that this political, social—if you like, logical—aspect of this question should be understood.

From what we have heard in the Security Council, from all the discussions, the debates, the writings and everything else that goes on in Pakistan and which have been communicated in the views expressed by the foreign Press, there is some idea that over and above the Security Council decisions there is a basis for the affiliation of Kashmir to Pakistan, that there is some natural affinity.

What are these considerations? We accept some of these considerations, but we argue that they are either equally or more applicable to us. For the moment, I am putting on one side whatever title we may have derived. I am talking of the extra-legal considerations and the extra-security considerations. The first of these is geographical contiguity, which is commonly accepted by all of us.

The answer to that is that Kashmir has a frontier with Pakistan on the west and slightly to the north-west. It has a frontier with India and communications with India. It has a frontier with Russia in Sinkiang and China and Tibet. Therefore, Kashmir has a large number of frontiers.

Geographical contiguity is very often governed to a considerable extent by the historical past, and Kashmir's economic relations and commercial relations have been very much more with India than with Pakistan. This did not arise in the old days, because it was one country. Therefore, if it is a question of a common frontier and of contiguity, it is not as though the accession of Kashmir to India is the accession of some far off island which is separated from the rest of our territory. To put it at its worst, contiguity is a common factor.

The other matter is one on which my Government will not in any circumstances alter its position. We refuse to recognize what is called the "two-nation theory". India is a secular State, where any person, Hindu, Muslim, Christian, Buddhist, or whatever he is, is an equal son or daughter of India, with rights of citizenship guaranteed by our Constitution. India claims Islam as one of the Indian religions, just as it does Christianity or any other. Therefore, we refuse to accept the thesis that because the population of a particular area is of one religion, some political issue is involved.

We are not a theocracy, we are a modern, secular State governed on democratic principles, where the right of citizenship is based on residence, upon domicile, and upon loyalty to the Constitution. Therefore, we totally disregard this argument with regard to Muslim majorities and Hindu minorities, and everything else. Some of you may say that that is a very nice view, but it is not how the world is run. Then how do we look at it? Pakistan has a population—I am subject to correction—of between seventy and eighty millions, because I believe that their census, like ours, was taken in 1951, and our populations increase by one and a half per cent a year. Roughly speaking, Pakistan has a population of somewhere about 75 millions; Pakistan is in two parts and is separated by the Indian mainland extending for about 1,000 miles.

The proximity of Kashmir, ethnically and otherwise, is to West Pakistan, and I have no accurate figures of the Muslim population of West Pakistan. However, at the very outside, it cannot be more than about 30 millions, and there are nearly 50 million Muslims in India. If our Government were to accept the view that because people are Muslims, they should belong to another State, I ask the Security Council, in all conscience, to consider what would happen to the considerable Muslim minorities in my country. They are distributed over the whole of our land. In some places they are sparse minorities, in some places they almost form the majority in the area. Are we to say that they are second-class citizens? We refuse to accept that position in India. We have almost as many Muslims in India—and I qualify the word "almost"—as in the whole of Pakistan. We do not regard it as either a foreign culture or a foreign religion. What is more, whether it be in Pakistan or in India, whether they be Hindus, Muslims, Christians, or whatever they are, their ancestries are pretty much the same. One religion does not mean one race, nor does it mean that there is a separation as between the two religious groups in that way.

We have this considerable Muslim population inside India, but it is not regarded as a minority. There is no question of the Muslims having any special sheltered treatment; they would not have it. They are equal citizens in our country, taking their place in our Government, in our public services, in our industry, in our agriculture, and in everything else, just like everybody else. The secular State is one of those ideas and one of those possessions which we regard with great jealousy, because in this world the rivalry of religion and the amount of violence that has been carried out in the name of religious loyalty has been to an extent that should shame humanity at any time. Therefore, we are not prepared at any time to accept any view, whatever resolutions anybody may pass, that there is any justice or anything that a modern community can entertain in this idea of what was spoken of in the address of the Foreign Minister, who attributed it to Lord Mountbatten, about what is called communal representation or communal affinity, or something of that kind.

The whole connexion of Kashmir is, as I said a while ago, with the mainland. Its capital was founded in the third century B.C. I am not an antiquarian, I have not studied it, but the history of Kashmir is a continuous one. It has been ruled by Hindu kings, by Muslim kings, by Sikh kings, by Afghans, and by all kinds of people, but it

पं० इन्द्र विद्या वाचस्पति प्रदत्त संग्रह

has always been part of the mainland of India. Therefore, these are extra-constitutional, extra-legal, extra-United Nations considerations, by which I mean they are considerations which are outside the principles of the Charter, on the one hand, and which do not come into any of the resolutions or any of the decisions which we have made. However, it was necessary for me to put them forward because it was on them that the other argument was based, that the accession was wrong, that we got it by force or by fraud.

What, then, is the interest? Mr. Zafrullah Khan said that there are strategic interests. Well, I would argue first of all that the strategic interests of a country should not always be placed in the picture when we are talking about the fortunes of the people in that country. But let us leave that alone. What if there are strategic interests?

The strategic interests of a country like India, with its big land mass in the Indian Ocean, are at least as vital in the world as the strategic interests of its neighbour, and we are not aware of any strategic interests in our mind which are inimical to the strategic interests of Pakistan. Therefore, this strategic interest, which was advanced by the former Foreign Minister, in our opinion, is one that should not appeal to the Security Council.

What is the actual position with regard to this evaluation? I outlined briefly this morning the relation of Kashmir to India, that is, that when the British left India these States were to accede to one country or to the other, to one Dominion or to the other. That was the position. That way was prescribed in the Constitution, and it would be of interest to know that the way of accession was not thought out after the partition. It is contained in the Act of 1935 passed by the British Parliament. The way of accession is for the Head of the State to submit an instrument of accession and for the Government of India to accept it or the Government of Pakistan to accept it. So an offer of accession and an acceptance completes accession. That creates a union within a federation.

On 26 October the Maharaja of Kashmir who was the Head of the State—I am now dealing with the constitutional necessities—submitted to the Governor-General of India—in the constitution of that day the Governor-General of India was the Head of the Government, but not today; he was the representative of the British Crown because at that time we were an independent British dominion—an instrument of accession. The text of it is set out in Document 4. I will not read it because it is a legal document in conformity with what is said in the Constitution. I will read it if it is challenged, but otherwise I will not do so. It is set out in the Constitution, in the Act of 1935, as amended. That instrument was sent over and on the 27th, Lord Mountbatten, Governor-General of India, accepted the accession. Lord Mountbatten said:

> I do hereby accept this Instrument of Accession.
>
> Dated this twenty-seventh day of October, nineteen hundred and forty-seven.

The accession is complete. We should look at these caveats more frequently than we have done. It has been suggested time and again that there is something like provisional accession, that you can go in and come out.

This is a very serious matter for us, a serious matter not only for India but for every country seated around this table. We are a federation; we are not a confederation, and the units that accede to federation stay in once they have acceded. There is no provision in our Constitution, there is no contemplation in our Constitution for the secession, and that is not peculiar to us. Our institutions are largely derived from Anglo-Saxon parliamentary institutions which affected the constitutions of the countries of Western Europe and North America. In these countries there is no provision for secession at all. That is to say, under the Government of India Act, as in force on 15 August 1947, the relevant extract of which is in document 4, it has been set out how a State should accede. Once that accession has taken place there is no provision in this to go out. The only provision there is in regard to variation. A ruler may, by a supplementary instrument executed by him, and accepted by the Governor-General, vary the instrument of accession of his State by extending the functions which, by virtue of that instrument, are exercisable by any dominion authority in relation to the State. But, of course, the Government of India also has to agree. If the two sides agree, it is possible to vary the conditions of the relationship between the constituent unit in the federation and the central Government. That is all that is permitted by the law. Therefore, when anyone suggests to us that there should be a divorcement of this territory from our Federation, we are being asked to act against our constitutional procedures. Now I freely admit that when the municipal constitutional procedures, as your learned colleague will advise you, are against well-known principles of international law, international law prevails.

But in this particular matter the Constitution of India was presumed to be known to the United Nations when it was admitted as a Member. These provisions were there even before we were independent. Also, it is well-known to international law that in a Federation of our kind there is no right of secession. I want here to refer only to two instances. One is the well-known instance of the United States and it is possible to quote case after case to show where the constituent States of the United States have a greater degree of sovereignty than the units of our Federation—one can say this without going into domestic affairs—because they have residuary powers in those States. But it has gone to the Supreme Court of the United States time after time. I think the leading case in this matter is a case called Texas v. White, where the Supreme Court ruled once and for all that there was no such right vesting in a State. The issue was not whether they wanted to secede, but that was the point that had to be decided. For our purposes it is better, even more, to go into the general principle of secession. If you want me to, I can quote it. But any text-book on this subject will tell you that in a Federation there is no right of secession. Our Constitution in this sense is different from the constitution of some other countries. In Texas v. White, the Supreme Court settled the constitutional question. The book *Studies in Federalism,* edited by Bowie and Friedrich states that "the Supreme Court settled the constitutional question of the right of secession, as it had in fact been settled by the Civil War" (page 789).

I did not want to refer to that because the Civil War was not exactly judicial process. But, at any rate, it certainly showed the determination of a people to retain the unity of their country and which side really asserted itself. But in this case the Supreme Court said:

> When, therefore, Texas became one of the United States, she entered into an indissoluble relation.[1]

That is a provision of a constituent unit in the federation. In other words, a federation does not recognize divorce. Once it is in, it is a sacrament; it cannot be separated; it is an indissoluble relation. The Supreme Court continued:

> All the obligations of perpetual union and all the guarantees of republican government in the Union, attached at once to the State.[2]

That is to say, Texas by the fact of its admission, became an American State. It is not only Texas, but it is America, the United States of America. The Supreme Court continues:

> The act which consummated her admission into Union was something more than a compact.[3]

A State, in my submission, can no more banish itself from a federation than an individual can banish himself from a State. He has no right of divorcement from the community to which he belongs. There may be rules of exile in a country, but there

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[1], [2] and [3]. Interim Report of the United Nations Commission for India and Pakistan, 9 November 1948. S/1100,

इन्द्र विद्यावाचस्पति
चन्द्रलोक, जवाहर नगर
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is no way in which a man can disqualify himself except by committing a crime. The act which consummated the admission of Texas into the Union was something more than a compact; it was not a contract and therefore could not be dissolved. The Supreme Court continued:

> it was the incorporation of a new member into the political body. And it was complete and final... There was no place for reconsideration of revocation, except through revolution or consent of the States.[1]

It is possible for the Parliament of India, in the exercise of its sovereignty and according to its constitutional procedures which would require the consultation and the assent of the constituent State to separate it, but that is the kind of sovereignty that Professor Dicey spoke of when he said that a Parliament can do everything but make a man or woman. But that sovereign right is not what is at issue here. The issue is: What was the formal relationship which was contingent, which was conditional and which could be altered? Even if it was so, then a dispute about territory, to which the previous representative in this Chair, Mr. Gopalaswami Ayyangar, referred to and refuted, would have been very simple; but there is no such thing. I would refrain from quoting the general principles on this subject, but I want to refer to another instance, particularly in order that the representatives of the United Kingdom and Australia can come nearer to this problem.

Australia has six states. It is not a confederation. But power is much more dispersed, shall we say, than in Canada—and Western Australia, at one time, had ideas of separation. A plebiscite was taken. Some 130,000 people—in round numbers voted for separation, and 30,000 people voted for remaining in. The plebiscite, then, was in favour of separation. That was before the Statute of Westminster, and therefore any alteration of the law would require the consent of the British Parliament. It went to Parliament, and the Parliament appointed a joint committee of the two Houses which sits in judicial session on these matters. The case was argued by counsel on both sides, and the Parliamentary view about this was recorded in the joint committee's decision—that Western Australia could not secede. At any rate, if it were to secede, the decision had to come from the Australian Parliament—and then it would not be secession, but it would be separation.

The right of secession, then, does not exist in our federation. This may be abstract law, but it is of very great importance to us. And I want to ask the members of the Council to address their minds to what would happen to what is now called India if this principle were not strictly enforced.

I have mentioned that there were 562 states before the British went away. A handful of them are part of Pakistan; the remainder are part of the Indian Union. If every local Maharaja had a different idea the next morning and started seceding, our unity would disappear in no time. What is applicable to Kashmir would be applicable to every state that has acceded if once we said that the accession is not permanent but provisional.

Therefore, the Government of India, out of considerations of security, out of considerations of international law and the law of India, and the law that has been given to her by the British Parliament, cannot ever accept the idea that accession is anything but an indissoluble bond. When Kashmir acceded, that matter was finished. Therefore, there is no such thing as going out. In this country, as I said, they decided in other ways, and now it is being confirmed by the law courts of the country. Accordingly, any suggestion to us that the accession is provisional or temporary is very wrong.

We might then be asked: What is the meaning of the letter written by the Earl of Mountbatten, when he was Governor-General of India, to the Maharaja, about consulting the wishes of the people? I do not want to evade this question.

As I pointed out, there is a document of accession. There is an offer and there is an acceptance. That concludes the arrangement. I will not call it a contract—but that concludes the arrangement. The letter of the Governor-General is a separate document and has nothing to do with this. What does that document do? It makes no guarantees. It expresses the wish of the Government of India—not as part of the law, but as part of a political policy. We are entitled to ask that the Security Council should make a distinction between what is a policy of a Government at any time and the constitutional law or the principles of international law that govern these matters.

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[1] *Ibid*

Therefore, when the Governor-General of India wrote to the Maharaja and said, "In accordance with the general policy that we follow, we will consult", he did not say anything about a plebiscite; he said that the wishes of the people would be consulted. I shall deal with this more in detail when we consider the question of the plebiscite. Whatever we may have said in that way has, first of all, nothing to do with Pakistan and nothing to do with the international community; it is something between the people of Kashmir and ourselves. It is a pledge to them and to nobody else.

The Foreign Minister of Pakistan has quoted a telegram in which my Prime Minister says to the former Prime Minister of Pakistan, Mr. Liaquat Ali, that this is a pledge to all the world—a pledge to you and everybody else. I am going to deal with those telegrams of the Prime Minister, because they must be read in the context in which they were sent. And we have always communicated this view to the Government of Pakistan.

In the telegram of 31 October 1947, from New Delhi to Karachi, the Government says:

> Kashmir's accession to India was accepted by us at the request of the Maharaja's Government and the most numerous representative popular organizations in the state, which is predominantly Muslim. Even then, it was accepted on the condition that, as soon as the invader had been driven from Kashmir soil and law and order restored, the people of Kashmir would be able to decide the question of accession.

That is why the Constituent Assembly question becomes important—because, while we have no international commitment in this matter, we have a moral commitment to the peoples over there—that commitment in the context of things that appeared. Therefore, when we consider this question of consulting the wishes of the people, the plebiscite and so on, we should bear in mind that there are two aspects of it. One is the aspect of whether there is a commitment by the Government of India to other parties than the Security Council of the United Nations, and the other is the aspect of whether there is a commitment that has come in the context of the United Nations. And that is where the consultation of the people has arisen.

First of all, the reason for stating this wish was the previous history of Kashmir. Kashmir was ruled at that time by a Maharaja who was far from having given it a popular Government. The leaders of the national movement were in prison. The national movement in India was in close association with it, and the leaders of the Indian national movement have shared the prison life of these people. So this great national movement, which was kept under suppression by the Maharaja—was really Kashmir in a political and social sense. And a Government like the Indian Government, which had installed itself after a peaceful revolution, could not feel happy in merely accepting the accession—not for legal reasons, but political reasons—of the Maharaja. It therefore consulted what was at that time the only widespread movement in the place—the National Conference.

While we are on this subject, it is well to say that the national movement in Kashmir started as a communal movement. It was first called the Kashmir Muslim Conference—and then, as soon as it became mature, it dropped this sectarian outlook and made itself national. For twenty or twenty-five years, they struggled and endured all the rigours of opposing the law, and went in and resisted the Maharaja's rule.

Therefore, when we accepted this accession, we did the best thing we could. And after that, if conditions had not been what they were, that is to say, if the country had not been invaded, if there had not been all that followed in the wake of the invasion, if the country had not been divided by the cease-fire line into the occupied part and the free part—the part occupied by Pakistan and the part that is free in India—then it would have been possible to do something else.

It is in that context that the telegram to which the Foreign Minister of Pakistan has referred was sent to the former Prime Minister of Pakistan. And I would request the Security Council to read the text of that telegram, because it was more a message from the heart than from any political deliberations. It was a time when India and Pakistan were emerging from the background of the great mass slaughter on the north western frontiers and it was hoped on both sides to prevent any further spread of this bloodshed.

If the telegram is to be quoted, the next paragraph should also be read. The Foreign Minister of Pakistan quoted a paragraph—and it is accurate as far as it goes. But I submit that the Security Council, in looking at the document, has to look at the previous and the succeeding paragraphs, if necessary. Now, this is what the succeeding paragraphs say:

> I have no doubt that you realize that the raiders from the frontier province or along the Murree Road came from Pakistan territory and that it is the easiest thing in the world to stop them at the two bridges which connect Pakistan territory with Kashmir.

In other words, it was an appeal to him to stop the bloodshed at these bridges. They were not so prevented, and the equipment of arms, including artillery and automatic weapons, bears witness to the help being given them.

The telegram goes on:

> We are credibly informed that regular officers of the Pakistan Army are advising these raiders. Even now, it should be easy for your Government to stop the passage of them and their supplies to the Kashmir territory.

Now, the statement made by Mr. Khan Noon should be read in the context of the telegram of 31 October 1947 from the Prime Minister of India and of the reply by the Prime Minister of Pakistan.

At the Security Council's seven hundred and sixty-first meeting, I said that Mr. Khan Noon had referred—not only as regards the subject with which I am now dealing, but also as regards other subjects—to private conversations between the Prime Ministers. I asked the Council's indulgence—and it was freely given—so that I might have an opportunity to consult my Prime Minister. At that time, I did not have before me the full text of the telegram in question. I have now obtained the necessary information from my Prime Minister. This is what he says:

> As far as we can find out, Sir Feroz Khan Noon's references to statements by me all relate to certain messages sent by me to Liaquat Ali Khan within the first ten days or so of the invasion of Kashmir in 1947.

I would ask the Security Council to place itself within the context of that background. I continue to read from my Prime Minister's communication to me:

> During those days, we had no knowledge of the part that the Pakistan Army was playing in this invasion—that is, obviously helping the raiders. It was later, in November, that we came to know of the presence of the Pakistan Army itself in Kashmir, because our troops came into contact with them there. You will notice (Krishna Menon: And here the Prime Minister is referring to me) that, at the time that I had suggested to Pakistan to make a joint request to the United Nations to undertake a plebiscite in Kashmir, Pakistan did not accept this, and in fact continued its aggression for a year subsequently—that is, throughout 1948.
>
> We went to the Security Council to avoid all-out war with Pakistan. Later, the fact of Pakistan's aggression came out clearly. The military situation in Kashmir State began to be unfavourable to them.
>
> The resolution of the United Nations Commission of 13 August was agreed to by India, subject to clarifications. Pakistan did not agree to this resolution and continued the aggression. Owing to a further deterioration of the military situa-

tion, they agreed to the United Nations resolution of 5 January, which supplemented the 13 August resolution.

Now, this goes back to a very early period of the tumult. It was our hope that Pakistan would join us in settling the matter.

At this point, I should like to say something that I shall have to repeat later. If an offer is made and it is not accepted at the time it is made, it cannot be held for generations over the heads of those who made it. It is quite true that at that time we told Pakistan, "Let us go to the United Nations together and ask for a plebiscite". They did not agree. When they did not agree, that offer lapsed. They cannot come here nine years later and say, "You mentioned the word 'plebiscite' ". That is the position. We have made many offers to Pakistan at various times. Some of these offers may be reconsidered, if necessary, when the time comes. But, if an offer made to an opposing party is not accepted within a reasonable time, it cannot be maintained that it is still an open offer. The offer terminates when it is not accepted. In very many cases, we have said that explicitly; where we have not done so, it must be taken as the normal state of affairs.

This is the position as regards accession. There can be no conditional accession. That would be against our constitutional procedure. It would amount to denying citizens of India the right to live in a free country, where they have the fundamental guarantees of freedom. It would amount to making those citizens run the risk of having to live a different kind of life elsewhere—a risk which we are not prepared to have them run.

It has been said that we obtained this accession on the one hand by force and on the other hand by fraud. In anything that I shall now say on the question of force, I do not wish to be understood as referring to the word "fraud". So far as force is concerned, I would say this: Force did play a part in this accession. Force affected the timing so that the Maharaja had no alternative but to ask for protection. Apart from any questions of accession, apart from any questions of the law relating to this matter, I would ask the Security Council this question in all conscience: If a State is being invaded, is it not the most natural thing in the world for that State to ask a neighbour to come to its protection? Is such a request to be regarded as the imposition of force from outside? We used no force in connexion with the accession. I believe that the Security Council is familiar with communications in this respect from General Lockhart, the British Commander-in-Chief of our Army, and from Air Marshal Elmhurst, the head of the Air Force at that time—in any case, I shall circulate these communications. These officers were commissioned by His Majesty, the King of England, and were on temporary service with us. They had nothing to expect from us by way of reward, but they categorically stated that any suggestion that there was any conspiracy in connexion with this accession was entirely wrong.

Thus, I repeat, we used no force. The only force we used was that necessary to repel the invader—and I believe that that is a force which we are entitled to use, and indeed are enjoined to use, under the Charter.

With regard to the other suggestion that some sharp practice was involved, I set out this morning the conditions of the standstill agreement. Had the State concluded the standstill agreement with us, we should immediately have become responsible for its foreign affairs, defence, and communications—but, as I said this morning, this matter was interrupted by the invasion. The Security Council will recall the chronology of the invasion which I read out this morning.

Therefore, it can be seen that it was not we who used force—or that other word which I do not want to use. The accession was legal. As I have already said, at one time, before the Maharaja had made up his mind, we asked the Governor-General to tell him to accede to Pakistan if he so wished. Lord Mountbatten told the Maharaja categorically that we would not regard such accession to Pakistan as an unfriendly act. But that was before all these events which I have described took place. Thus, there was no question of our trying to inveigle the Maharaja into any kind of accession.

Questions may be asked regarding the right of the sovereign—that is, the Prince—to make the accession for the State. In this respect, we have the very reputable and, in this particular case, very helpful authority of Mr. Jinnah. Mr. Jinnah was President of the Muslim League and a founder of Pakistan. He said the following on 17 June, before he became Governor-General of Pakistan:

> Constitutionally and legally, the Indian States will be independent, sovereign States on the termination of Paramountcy, and they will be free to decide for themselves to adopt any course they like. It is open to them to join the Hindustan Constituent Assembly (Krishna Menon: that was what they called us).
>
> or the Pakistan Constituent Assembly (Krishna Menon: that was their name)
>
> or decide to remain independent. ...I am clearly of the opinion that the Cabinet Mission's memorandum of 12 May does not in any way limit them in this choice.

Just two weeks before the partition took place, Mr. Jinnah reiterated this attitude before the Muslim League. He said:

> They are free to join either of the two dominions, or to remain independent. The Muslim League recognizes the right of each State to its destiny.

There are other statements by Mr. Jinnah in which he says that the person to whom the accession should be offered is the Ruler. If that were not the case, there would be no legality. The Ruler is the repository of power. Whether, morally speaking, he is democratic or not is another matter. In an Indian State, however, all power flows from the Ruler—in some cases, this is true only in theory; in many cases, before independence, this was also true in form. There was, therefore, no one else who could have offered the accession.

I come now to the question of the Constituent Assembly. In acceding to India every State—not only Kashmir—had the right, if it so wished, to call its own Constituent Assembly.

They could have discussed various other matters, the allocation of various sources of revenue and all kinds of things like that. But the majority of States, in fact all of them after some time—some of them had toyed with the idea—decided that it was a waste of time and energy in procedure, so they elected members to the Indian Constituent Assembly. When the subject was under discussion and they did not see the reason, the Princes of India—patriotic men and women as they were—all realized the importance of allowing a united India to emerge, and it was the Princes who came forward, without making any difficulties in regard to this matter, and decided to go into the Indian Constituent Assembly. But in Kashmir a different situation had arisen on account of this trouble, and therefore that matter was left alone. Besides, in Kashmir, there had been a powerful national movement which in 1944 had asked for a constituent assembly, and their demand for a constituent assembly is part of their national upbringing. I would ask the Security Council whether any democratic government could disregard a very well established feeling of that kind.

What I am here concerned in pointing out is that this idea of a constituent assembly was not something either strange in the relationships between India and the Indian states, or something that we conjured up just because the matter was before the Security Council. It was there long before there was an invasion of Kashmir; it was part of the demand of the people to the Maharaja. But the Maharaja had his own plans, like some countries have for their colonial territories and will not give them any power, and he would have none of it.

So the national movement in Kashmir wanted this constituent assembly. Then came the war, the invasion and all these troubles and the matter was kept in suspense. Kashmir acceded in three main subjects only. There were various other matters, because under the British rule there were varying relations between British India and the Indian States and in the case of Kashmir there were a large number of problems, of customs and so on, to be resolved. So they decided to have their own constituent assembly.

What does this constituent assembly amount to? So far as the Security Council is concerned it has to look at the documents. These are constitutional documents and I would ask the Council to look at the document which is the source from which the constituent assembly in its present form derives its existence; then its scope will be seen; because it has been presented as if this constituent assembly were a device rather in disregard of all other processes. It is contained in the proclamation of the Yuvraj of Kashmir, the son of the old Maharaja, who is elected by the people every five years—this is a democratic process. He is the head of the state and he issued a proclamation on 1 May 1951, and this is the proclamation:

> Whereas it is the general desire of the people of the State of Jammu and Kashmir that a Constituent Assembly should be brought in to being for the purpose of framing a constitution for the State (Krishna Menon: that is its terms of reference).
>
> Whereas it is commonly felt that the convening of the Assembly can no longer be delayed without detriment to the future well being to the State (Krishna Menon: again a purpose with which we do not disagree)
>
> And whereas the terms of the proclamation of the Maharaja (Krishna Menon: his father) dated 5 March 1948 in regard to the convening of a national assembly as contained in clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation Krishna Menon: it is out of date).
>
> I, Yuvraj Karan Singh, do hereby direct as follows:
>
> (1) A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir;
>
> (2) For the purpose of the said elections the State shall be divided into a number of territorial constituencies each containing a population of 40,000 or as near thereto as possible, and each electing one member. A delimitation committee shall be set up by the Government to make recommendations as to the number of constituencies and the limits of each constituency;
>
> (3) Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person who is a State subject of any class, as defined in the notification No....., is not less than twenty-one years of age on the first day of March, has been a resident in the constituency for such period as may be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person who is of unsound mind or has been so declared by a competent court, shall be disqualified for registration;
>
> (4) The vote at the election shall be by direct and secret ballot;
>
> (5) The Constituent Assembly shall have power to act notwithstanding any vacancy in the membership thereof (Krishna Menon: that is in order to provide for the places from which people could not be elected, in the occupied area. There again, they tried to work it out as smoothly as possible without talking about annexation or anything of that sort. They simply left that place vacant);
>
> (6) The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business;
>
> The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation.

Then it goes on to say that all things done before the issuing of this proclamation with a view to facilitating the provision of electoral rules for the purpose of election to the Constituent Assembly shall, in so far as they are in conformity with the provisions of this proclamation—therefore anything that is not in conformity with this proclamation, or the decision of any conference, is not binding at all—will be deemed to have been done or taken under this proclamation as if it was in force at the time such things were done or such steps were taken.

This is the proclamation which states the terms of reference so to speak of this Constituent Assembly. It is quite clear from this proclamation that the function of this Constituent Assembly is to make a constitution for Kashmir. It could not make a constitution for defence, external affairs or communications, or do anything against the fundamental rights of the Indian Constitution, because it had accepted accession by that time.

Now we turn to the document which is the constitution adopted by the Constituent Assembly and look at what it says. The burden of the argument here is that this Constituent Assembly is going to create a new relationship, and my answer is, in terms of international law: the actions of a Constituent Assembly are not creative, they are merely declaratory; they do not make anything new.

What does it say?

> We, the people of the State of Jammu and Kashmir, having solemnly resolved, in pursuance of the accession of this State to India (Krishna Menon: if anything is wrong, it is the accession that is wrong not the Constituent Assembly; the relationship with India was not brought about by the Constituent Assembly, it was brought about by the accession) which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among us all fraternity assuring the dignity of the individual and the unity of the Nation;
>
> In our Constituent Assembly this seventeenth day of November, 1956, do hereby adopt, enact and give to ourselves this Constitution.

So if there was a date, that was 17 November 1956. Secondly, this Constitution creates nothing. It is in pursuance of the accession. If the relationship of Kashmir is not acceptable—as it is not—to Pakistan, then the thing to quarrel with, so far as the Constitution is concerned, is the Instrument of Accession and the Government of India. The Constituent Assembly could do nothing; it was done in pursuance of the accession. In other words, this is the act of a sub-sovereign body.

It is the by-laws, if you like—it is for the internal government of the country, where an enormous amount of social reform is taking place, where land reform has resulted in the abolition of the old form of landlordism and where no one can hold more than twenty-three acres of land, where education has spread. They want to arrange all their economic affairs. Furthermore, I want to draw the Council's attention to Part I of the Constitution, which states, in paragraph 1(2):

> (2) This section and sections 2, 3, 4, 5, 6, 7, 8 and 158 shall come into force at once (Krishna Menon: that is to say when this Constitution is put in draft) and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1957....

Now what are the reserved clauses? I have mentioned sections 2, 3, 4 and 5. Section 3 reads:

> 3. The State of Jammu and Kashmir is and shall be an integral part of the Union of India.

That provision came into force in November.

> 4. The territory of the State shall comprise all the territories which on the fifteenth day of August, 1947, were under the sovereignty or suzerainty of the Ruler of the State.
>
> 5. The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India.

All those provisions which relate to federation matters, to matters of the relationship between the State and the Federation, are matters of past history.

In this connection the Presidential Order of 1954 is important. That is part of our Constitution. It is not as though the 26th is a zero hour. As a matter of fact, the Security Council is in a somewhat difficult position. Actually nothing will happen on 26 January except, in all probability, before midnight of the 25th the Constituent Assembly will dissolve itself.

Can the Security Council tell them that they should not dissolve themselves? The Security Council has been asked to put itself in a position where its actions would have no meaning in this connexion. If there were any issue, that issue should be in regard to accession. Is Kashmir a part of India? There I think the Security Council is tied up by the findings of the Commission; it is tied up with constitutional law and practice; it is tied up with the law of federations and, what is more, it is tied up with the principles of the Charter.

The Security Council, of course, in its profound wisdom may do what it likes. I now speak from memory, which is not always very good, but the Foreign Minister of Pakistan either said or suggested that there should be some restraining action in the character of an injunction. Members know that an injunction is an equitable process, a process arising from equity. And what invader can ask for equity? Therefore, that question does not arise.

I want to submit, therefore, that the whole of this crisis atmosphere which has been created about 26 January is just unreal. The 26th of January with us, as with Dr. Walker in Australia, marks the foundation of our Constitution. It is India's national day. Therefore, this new State has finished its municipal constitution. Its conduct is municipal—it is dealing with its legislature, how many members of Parliament there should be, what to do with the land laws, what taxes they should raise and are competent to raise in connexion with the Federation of India, what the powers of the Speaker of the House or the Advocate General might be—these are the matters contained in this Constitution. A great many of them are already in operation. The Constituent Assembly in Kashmir as was the case in India sits both as a parliament and as a constituent assembly. When it sits as a constituent assembly it is presided over by its chairman. When the chairman leaves the chair and the speaker presides, it becomes a parliament. The same body functions in two different ways. Whenever the Constituent Assembly completes consideration of a particular measure which is necessary for the welfare of the people, the Parliament enacts it. It is part of what has already been done and there is no crisis or zero hour, there is no action from which restraint can be exercised. The only thing that could be restrained would be to undo the act of accession. But the right thing for the Security Council to do, in the submission of the Government of India, would be to ask for the observance of the Charter and for the vacating of the aggression. That is the problem before the Council.

I have taken this out of the general scheme of the argument in order to meet the wishes of the various members of the Security Council who had intimated privately that they would like to hear about it. That is the position as regards the Constituent Assembly. I hope that the Security Council is not going to find itself in a position where it will subscribe to a decision which is so devoid of reality, which will expose it to ridicule, which is so unconnected with the events of the day and which is contrary to the constitutional procedures of a sovereign State, of a Member State whose constitution is presumed to be known to the United Nations in international law. What is more, there are large numbers of people who subscribe to the same kind of legal system to which we subscribe.

I should like, therefore, to erase from the minds of members this idea of a crisis or a zero hour or of something happening on 26 January. It is a day which is observed in every part of India in general jubilation as the day when the Constitution of India was inaugurated. It traces its origin to midnight, 25—26 January 1930 when, on the banks of the Ravi, the present Prime Minister, the President of the Indian National Congress, stated that all men are entitled to their freedom. Therefore, should any country oppress us, where there is a rule of that kind we shall try peacefully to terminate it. That was the declaration of independence in 1930, and this is the anniversary of that day.

There is nothing in this, therefore, which should attract the attention of the Security Council with regard to the Constituent Assembly process. I have taken pains to inquire about what actually is going to happen on that day. I understand that all that will happen will be a formal meeting of the Assembly in order formally to wind up their affairs because they no longer have any function. Parliament may then sit the next day.

This was not arranged in view of the meeting of the Security Council. It is part of its normal proceedings. It has finished its functions long ago. There is no particular reason why it should do this on the 26th, except that it may thus spare the expense of having two separate celebrations, one to wind up the Constituent Assembly and another for its national day. The appointed day in this respect follows the Constitution of India. In fact, the Australians are always competing with us in this connexion with the result that we cannot get enough people to come to our functions.

I have so far argued that the claims in regard to this are based, on the one hand, upon something which is extra-legal and extra-constitutional and outside the decisions of the Security Council, and I have submitted the views of the Government of India in refutation of that position. There are no considerations which are so generous in this matter, no considerations which, on their own merits, indicate that this must have been the course. To the extent that the Foreign Minister of Pakistan has quoted authority, I have proved, if my documents are correct—and they are open for scrutiny to anyone—that those conditions not only did not exist but that they referred to other matters. The legal and constitutional aspect of it relates to the accession.

I should like once again to repeat that this is a matter—and I quoted this position this morning—on which the Government of India has at no time made any recession. What is more, the Commission has at no time raised this point; that is to say, it is accepted on all sides. The members were concerned with the issues of international peace and security, and that is the function of the Security Council.

I ask you, Mr. President, to look at Chapter VI or even Chapter VII, if you wish, and I ask where is the provision to challenge the merits of accession. The Security Council is called upon here to deal with pouring oil over troubled waters. So far as we are concerned, we have not only helped to fetch the oil, but we do not trouble the waters at all. We ask the Council to restrain others from making the water muddy.

If those two issues are out of the way, then what remains? What remains is aggression. That is what remains in any claim that can be made with regard to what is called a plebiscite.

As regards the commitments which we have made, I am prepared to face them quite squarely, because the Government of India has a responsibility to explain its position before a world body such as the United Nations.

We did not ask the Security Council at the end of five years to spend several days on this matter. Our sister State of Pakistan desired to do so, and we were quite prepared to come here either in June of last year, when there were rumours about it, or at the present time. You, Mr. President, notified us about this meeting, and we are here.

Now, what is this commitment? The commitment is that in various resolutions it has been said that it is the wish, that it is the desire, to refer this matter to the people of the country, and so on. I do not know whether you want me to quote this again, as I have quoted it so many times, but it is all there.

No one, least of all any responsible person from India, says that the question of plebiscite was not considered at one time under certain conditions. It is an error, if I may say so, to ask a Government to consider what it has offered and what it has considered outside the context of any circumstances.

Any lawyer here would know that even in

a civil matter, even in a matter between individuals inside a country, all the surrounding circumstances have to be taken into consideration. The nature of these commitments is twofold. The plebiscite, I think, has, first of all, two aspects, and one aspect has two sub-aspects.

One aspect is the commitment we may have made to the peoples of Kashmir, that is to say, what came out of us by our own volition in the context of the national life of India. That is represented by the communication made by Lord Mountbatten to the Maharajah on the 27th, which states that "it is the wish of the Government in accordance with our policy"—he did not say anything about a plebiscite—"to have a reference to the people." That might be any kind of reference; it might be a referendum; it might be a plebiscite; it might be a general election; it might be Gallup Poll; it might be anything. That was the position at that time, but let us assume that it was a plebiscite. Even he attached conditions to it: when the soil was cleared of the invader and peace and order was restored. I cannot state the authority of my distinguished colleague from Pakistan on the question of peace and order, because in one part of his statement he says there is peace and order but in another he says there is not. I think he is right, because there is peace and order in the territory we administer.

That is one commitment. Now I should like you to look at this. This is very much like an equitable doctrine, and therefore I think that one may make an analogy. Suppose that you, Mr. President, with all the wealth you possess, make a testimentary disposition to your children, willing them your property and saying that you give so much money for this and so much for that, and that at the end of it you say to your eldest son, "It is my wish that out of this money you should build a library," or something of that character. That has no force in law; it is the expression of a wish. All that binds the young man is what you have said. The expression of a wish is not binding in any equitable relations. It may be respected. We try to respect it.

Therefore, the first commitment, if it is a commitment, is to the people of Kashmir. No other party comes into it. Secondly, it is in consonance with the policy of the Government of India. Policies of Governments are matters which the Governments alone can decide. Thirdly, it was effective when the soil was cleared of the invader; and, fourthly, when peaceful conditions had been restored.

That is why my friend and predecessor, Mr. Gopalaswami Ayyangar, when he came here, said that the garrisons of India must garrison the Northern area, that the troops must be kept to prevent tribesmen coming on the Western frontiers of Western Kashmir and on the north-western frontiers of north-western Kashmir. The whole of the territory comes under the sovereignty of Jammu and Kashmir, as is admitted by the Commission.

Therefore, that condition, even so far as we are concerned, does not exist. But we did our best. We hung this up for sometime, right from 1948 till about 1952, hoping that something would happen.

The members of the Security Council are all of sovereign independent States given to the democratic way of life. Can the Security Council ask us that the people of Kashmir should be without franchise, without the guarantee of fundamental rights without being able to introduce the economic legislation that is necessary for their planning, their education and things of that character? How is that to be done? It is to be done by command from the Government of India? That is not how our country is governed. These provisions are made by the constituent assembly for that reason. Therefore, while it was not possible for us to do it in one way, we did it in another way.

So in Kashmir there is a legislature, a constituent assembly that functions. In that parliament there is an opposition, small as it is. In 1952 there were fifteen newspapers and journals in Kashmir, in a very small area where the majority of people are not literate; today there are fortyeight. What is more, as I shall point out later, in the last two or three years more than 500 primary schools have come into this area. So it can be seen that the Government of Kashmir is advancing all State matters in this way. Therefore, to the extent that the wishes of the people could be consulted, we did so.

The Foreign Minister also made a reference, not very complimentary to us, to the election of this constituent assembly. I am prepared to face this issue also. The proclamation asked for a universal franchise, secret ballots, and so on. The constituent assembly elections were announced; the electoral rolls were prepared; the electoral constituencies were delimited. All the arrangements were made. The candidates came forward. A fact that has not been mentioned is that the opposition candidates who afterwards withdrew did not come from the people who are either Moslems or those who wanted to go to Pakistan or were suspected of wanting to go to Pakistan; they came from the orthodox Rajput Hindu sections of the community who were against India for its being a secular State. We did not stop them, but they realized that in this large country, where there is a big nationalist movement, they did not have a chance. Having filed their nominations, and all arrangements having been made before the election dates, they withdrew their candidacy.

According to our election laws, in common with the election laws of the United Kingdom, Australia, and, I believe, other countries, each candidate has to deposit a certain amount of money, and if he does not poll one-tenth of the votes he forfeits the deposit. What is more, he looks very ridiculous if he polls a microscopic number of votes. These people, having used the elections for propaganda purposes, withdrew their candidacies. They were not forced to withdraw or anything of that character. The result was that the others were returned unopposed. There are many unopposed elections of this type.

Whilst the case is not an exact parallel, I would ask my colleague from Pakistan to look at the elections in India in 1937. Then a national movement of that character, in the context of the first election, swept everything before it.

The test of this is in the municipal elections. Sometimes we have candidates withdrawing from elections. Where there is no forfeiture of deposits there is no obligation of withdrawal. There are many elections of municipalties and local bodies in Kashmir, and in all these elections the same party has come out on top. Therefore, the idea that there was a one-party state or a kind of election to order is entirely inconsistent with what goes on in India.

With great respect to the Security Council, I would submit that when a country has the largest democractic electorate in the world, when it has a constitution guaranteeing the fundamental rights, when every man and woman in it may vote and, what is more, when 200,000,000 people will go to the polls in two months in that country, I think that to speak of such a country as stifling elections is a charge that cannot pass muster. I shall not say anything more than that.

You cannot compel people to be opposed. If there are unopposed returns, it does not mean that the system is not functioning. The constituent assembly does not sit in secret. The world press is there.

Kashmir is the centre of the world's visitors. Last summer we had 62,000 people in Kashmir as visitors, and 9,000 of them were foreigners, and the majority Americans. And they did not stick to the towns. They went around all over. Therefore, any suggestion that this Constituent Assembly was an arranged pocket affair is very much of a mistake. What is more, in that Constituent Assembly, as regards the very men whose names were referred to by the Foreign Minister of Pakistan as now having fallen from favour and therefore were in prison, when I go into the facts the Foreign Minister will probably be pleased to withdraw some of these names.

But at any rate that is another matter. However, what I say is this: that the candidates who were elected are people who have been participants in the national movement for a very long time. For the convenience of the Council I have submitted as document 6 the statement made by Sheikh Abdullah to the Jammu and Kashmir Constituent Assembly. It is an extremely interesting document and we do not make any apologies for submitting it. Sheikh Abdullah is in detention. He is in detention under the law of Kashmir. I will come to that in a moment, before I finish the whole submission.

In this address to the Constituent Assembly he has put to them the pros and cons of accession. That does not bind us. That is the internal matter of the Kashmiris, because the accession is bound, as I said, by the law. But he, as an internal Kashmir leader, can tell the people what is good and what is bad for them; and he has said what are the advantages, what are the disadvantages, what is the case for remaining as an independent country and how long they would remain independent, and he has also stated some very lucid facts with regard to the invasion and the so-called liberation of Kashmir by the invaders. Therefore, I think that whatever may be the communications that now come, it is as well to read the case that was presented to the Constituent Assembly, because that shows the opportunity to discuss the pros and cons of it.

They did not do it in one day; it was not like a plebiscite when within twenty-four hours you have got to say "Yes" or "No" on a vast issue, with the Security Council or members of national Parliaments are not able to decide, ordinary populations are asked to decide to a stroke of the pen.

But apart from that, in this Constituent Assembly members spoke about each of these various aspects for what their State should have, more or less, about its defence, its industries and everything else. Therefore, to suggest that this Constituent Assembly was some kind of a time-table affair is a misnomer. Thus, so far as we are concerned, on the commitments to the people of Kashmir and the plebiscite, on that leg of this argument we have discharged our obligations. Where we have not been able to discharge our obligations so far as the form goes, if that is considered necessary, we have been impeded by acts which are beyond our control, namely, invasion, unsettlement, occupation and the division of Kashmir by force of arms.

Sheikh Abdullah said:

> As a realist I am conscious that nothing is all black or all white, and there are many facets to each of the propositions before us. I shall first speak on the merits and demerits of the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's peoples' freedom. The autocratic rule of the Princes has been done away with and representative governments have been entrusted with the administration. Steps towards democratisation have been taken and these have raised the people's standard of living, brought about much-needed social reconstruction, and, above all, built up their very independence of spirit. Naturally, if we accede to India there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years, the Government of India has never tried to interfere in our internal autonomy. (Krishna Menon: We were not permitted to do so by our Constitution.) This experience has strengthened our confidence in them as a democratic State. (Krishna Menon: This is Sheikh Abdullah speaking).
>
> The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all without distinction. This is the bed-rock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any unnatural cleavage between religious groups is the legacy of Imperialism, and no modern State can afford to encourage artificial divisions if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State, which is a throwback to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, colour, caste and class.
>
> The national movement in our State naturally gravitates towards these principles of secular democracy. The people here will never accept

a principle which seeks to favour the interests of one religion or social group against another. This affinity in political principles, as well as in past association, and our common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

We are also intimately concerned with the economic well-being of the people of this State. As I said before while referring to constitution-building, political ideals are often meaningless unless linked with economic plans... As you know, and as I have detailed before we have been able to put through our 'land to the tiller' legislation. (Krishna Menon: And he goes on to talk about legislation that has taken place. Then he continues as follows):

In the second place, our economic welfare is bound up with our arts and crafts. The traditional markets for these precious goods, for which we are justly known all over the world, have been centred in India. (Krishna Menon: That is, their economic life is tied up with us.) The volume of our trade, in spite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals, and in the raw materials of industry; we need help to develop our resources. India, being more highly industrialized than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing... It is around the efficient supply of such basic necessities that the standard of living of the man in the street depends. (Krishna Menon: Then he goes on to talk about the disadvantage.)

To begin with, although the land frontiers of India and Kashmir are contiguous and an all-weather road link dependable as the one we have with Pakistan does not exist. (Krishna Menon: But now it does; at the time he spoke it did not) this must necessarily hamper trade and commerce to some extent, particularly during the snowy winter months. But we have studied this question and with improvements in modern engineering, if the State wishes to remain with India, the establishment of an all-weather stable system of communication is both feasible and easy. Similarly, the use of the State rivers as a means of timber transport is impossible if we turn to India, except in Jammu where the river Chenab still carries logs to the plains. (Krishna Menon: their timber trade is with Pakistan).

In reply to this argument, it may be pointed out that accession to India will open up possibilities of utilizing our forest wealth for industrial purposes and that, instead of timber, finished goods, which will provide work for our carpenters and labourers, can be exported to India where there is a ready market for them. Indeed in the presence of our fleets of timber-carrying trucks, river transport is a crude system which inflicts a loss of some 20 to 35 per cent in transit.

Still another factor has to be taken into consideration. Certain tendencies have been asserting themselves in India which may in the future convert it into a religious State wherein the interests of Muslims will be jeopardized. (Krishna Menon: He has put in every argument). This would happen if a communal organization had a dominant hand in the government and Congress ideals of the equality of all communities were made to give way to religious intolerance. The continued accession of Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered judgement that the presence of Kashmir in the Union of India has been the major factor in stabilizing relations between the Hindus and Muslims of India. Gandhiji was not wrong when he uttered words before his death which paraphrase, 'I lift up mine eyes unto the hills, from whence cometh my help'.

As I have said before, we must consider the question of accession with an open mind, and not let our personal prejudices stand in the way of a balanced judgment. I will now invite you to evaluate the alternative of accession to Pakistan.

Now he has dealt with India. He goes on:

The most powerful argument which can be advanced in her favour is that Pakistan is a Muslim State, and, a big majority of our people being Muslims, the State must accede to Pakistan. This claim of being a Muslim State is of course only a camouflage. It is a screen to dupe the common man, so that he may not see clearly that Pakistan is a feudal State in which a clique is trying by these methods to maintain itself in power.

I am only quoting Sheikh Abdullah. He goes on:

In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life, but often it leads to irrational action. Some argue, as a supposedly natural corollary to this, that on our acceding to Pakistan our annihilation or survival depends. Facts have disproved this. Right-thinking men would point out that Pakistan is not an organic unity of all the Muslims in this sub-continent. It has, on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistans at least a thousand miles apart from each other. The total population of Western Pakistan, which is contiguous to our State, is hardly 25 million (Krishna Menon: I was wrong; it is less than I said) while the total number of Muslims resident in India is as many as 40 million.

As one Muslim is as good as another, the Kashmiri Muslims, if they are worried by such considerations, should choose the 40 millions living in India.

Looking at the matter too from a more modern political angle, religious affinities alone do not and should not normally determine the political alliance of States. We do not find a Christian bloc, a Buddhist bloc, or even a Muslim bloc, about which there is so much talk nowadays in Pakistan. These days economic interests and a community of political ideals more appropriately influence the policies of States.

We have another important factor to consider, if the State decides to make this the predominant consideration. What will be the fate of the one million non-Muslims now in our State?

(Krishna Menon: Out of the 4 million population of Kashmir in 1941 more than one million were non-Muslims, and a great many of these were Buddhists of Tibetan race. The statement continues):

As things stand at present, there is no place for them in Pakistan.

Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair...

(Krishna Menon: I will leave this now and come back to the other course he has pointed out. I do not want to weary the Council. The third course which is suggested is), Why do they not remain independent? (Krishna Menon: And I am reading this in order to show that it is not as though these people were jockeyed into some position. They had all this before them.)

The third course open to us still has to be discussed. We have to consider the alternative of making ourselves an Eastern Switzerland, of keeping aloof from both States but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of the present deadlock. To us as a tourist country it would also have obvious advantages. But in considering independence we must not ignore practical considerations.

Firstly, it is not easy to protect our sovereignty and independence in a small country which has not the sufficient strength to defend itself on our long and difficult frontiers bordering on many countries.

Secondly, we must have the good-will of all our neighbours. Can we find powerful guarantors among them to pull together always in assuring us freedom from aggression? I would like to remind you that from August 15 to October 22 of 1947 our State was independent (Krishna Menon: This was before accession) and the result was that our weakness was exploited by our neighbour, with whom we had a valid standstill agreement. The State was invaded. What is the guarantee that, in future too, we may not be the victims of similar aggression?

He has developed this point, so I have read this out at length because this idea of accession is obtained.

Now, therefore, what is the nature of our commitments outside? I have dealt with the position with regard to the Kashmir people and ourselves. The outside commitments are what arise from the mention—and I want to use this word "mention"—of the word "plebiscite", and from its use as a provisional mechanism, or the idea that it can be part of a plan which is a concerted plan implementing itself in consecutive stages. That is what is being argued. First of all, I do not know whether I need repeat the arguments. I said this this morning and this afternoon, but all of these commitments can be tied up in these two resolutions of the Commission—that is, the resolutions of 13 August and 5 January.

The resolution of 5 January is an implementing resolution. It provides the mechanism, provided the decision is made. But our commitments for a plebiscite in this matter are, first of all, conditioned by the withdrawal of Pakistani forces and nationals, by the large-scale disbandment and disarmament of the Azad Kashmir army, by the restoration of the unity of the country, by the return of refugees, by the restoration of law and order and by conditions of security.

I have not the resolution before me; if I had, I would probably make this statement longer, but I do not want to do so. So if the Council will recall to mind the various "whens" and "afters" and "ifs" that were in that resolution, it will appreciate that there can be no shadow of doubt in any rational mind that what was conceived was a plan conditional upon a contingency. There are two levels of conditions, and those conditions have not been performed. What is more, in our view they are incapable of performance, so that it is therefore not possible.

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But whether they are incapable of performance or not, we had no commitment in this matter because the Government of India takes serious exception to the suggestion that we dishonoured our commitments. It is incumbent upon those who make these charges to prove them beyond all doubt.

We have made no commitments. What is the nature of commitments, Mr. President? You have long experience of international affairs. Commitments are treaties between nations; they are international obligations in the way of final acts, declarations, protocols and things of that kind. In this particular case what happened was that the Commission produced a resolution and we two agreed to it. There is no bilateral agreement between Pakistan and ourselves, technically.

But all the same, we are not only prepared to say, but anxious to say, that whatever there is, is to be found in the resolutions of 13 August and 5 January, with the assurances in the context of the conditions then existing. And what is more—and this is the most important part—did not the fact that violations of the guarantees and assurances given to the Security Council by the other side had taken place before the agreement, a fact which was concealed from the Council, mean that therefore, in equity, that agreement was vitiated in its foundation because it was not reached *bona fide*, if the Pakistan Government knew in August that that was the position of the Azad forces, as has been pointed out by the Commission.

These are not my words. Even at the risk of tiring the Council's patience I have quoted these phrases instead of giving them in indirect narration because I did not want to expose myself to a charge of inaccurate citation.

Therefore, those are our commitments. What is their position in the context of the Charter? These resolutions, first of all, are not Security Council resolutions; they are, to the extent that they have been endorsed by the Security Council. But what do they say? They are by way of recommendations—recommendations which can be implemented only if the two sides co-operate, if the two sides agree. Our side was willing to agree. It has been willing to agree, and it has tried for years to agree. But we have always said that the Government of India will never agree to the interference of Pakistan in the sovereign affairs of the State, and that the plebiscite is not Pakistan's business but has to be taken by a Plebiscite Administrator who has to decide its terms. And in any case none of these things can take place so long as the territory—more than 42,000 square miles out of 84,000—is under occupation.

I have not referred as yet to the story of the occupation of the North. I would like to do so during the next instalment of this statement, and I have to ask all those concerned to forgive references to individuals and nationalities which are of a character which is not intended to hurt them at all since they are the facts of history.

Thus we have no commitments in this way. Our commitment is contingent upon the performance of part II, and even then—even if part II is performed— what is the promise that we have made? The promise we have made is to confer with the other side. But conferring with the other side does not necessarily mean that we have to do what anybody else says, or that they have to do what anybody else says.

That is all the commitment in part III of section C of the resolution. People are likely to be misled by the enormous amount of wordage there is in the resolution, because there are supplementary resolutions. It is an implementing resolution of the minute and mechanism of election. Therefore, there are no commitments that can be laid at the door of India with regard to the carrying out of a plebiscite.

The next point is whether we have, by our action, made non-performance of Part II possible. I think that the Security Council, and every member of it, and our friends in Pakistan, would be entitled to point a finger of rebuke and scorn at us if it was our action that had prevented Part II from being implemented, because it is not equitable to say: I will do III if II comes about, and I go out and make II impossible. But the whole history which I have unfolded is not like that. The personal conversations of the Prime Minister, who is the head of the Government of India, the *aide-memories* and memoranda and correspondence with the Commission are all on record. It is not as though it was done at some low departmental level—although that would not bind the Government of India even then. It has been carefully gone into at every point. And then we come to the interpretation of agreements.

For this purpose, if the President so desires, we could take a hypothetical position. First of all, I said that there was no agreement on the level of a treaty. There is no international agreement of the type that is a protocol or a final declaration of a conference. What there is, is an agreement on a plan of settlement, which is a very different thing. Today it is us; tomorrow it may be some one else in the same position. If one cannot come before the Security Council and discuss with its representatives tentative plans and, if that, then something else, how can one carry on negotiations? All the agreements, all the meeting of minds, all the differences between minds constitute a plan that is contingent upon another contingency.

Now, for the purpose of argument, my Government will be prepared, not to admit that there is anything more than that, but to examine this problem as though it were a treaty. And I want to emphasize this because we have suffered in the past by making hypothetical propositions. Supposing we assume—which we cannot assume—that whatever we have said in the way of a treaty is a plebiscite; what are the obligations under international law with regard to treaties? I am not going to quote any law because this is not a juridical body, but there are principles of international behaviour. There are some conditions which are laid down for the interpretation of treaties. They are here in Oppenheim's "International Law". If anyone is apprehensive that I might be unfair in quoting only parts of it, I am prepared to read the whole, but it will take a long time. I shall quote the parts which I think are relevant, and if there is any doubt, I will read the remainder:

> It is taken for granted that the contracting parties intend something reasonable, something adequate to the purpose of the treaty, and something not inconsistent with the generally recognized principles of international law.

I say that what the Security Council is being asked to believe that we have committed ourselves to is not anything reasonable. That is to say, to plunge a country that has got law and order institutions into a whole mixture of foreign intervention that is already on its frontier, to make this gateway of invasion into another way of interference, another way of the violation of sovereignty, is not reasonable. It is not reasonable to assume that there could be freedom of the poll in a Pakistan-occupied area when there are—as I will tell the Council later—how many divisions of the Pakistan army within five and thirty miles of its border, when there are forty-five battalions of Azad forces ready to line up; with modern troops and equipment. We have some idea of this equipment; we do not live far away. There are airstrips built in these places—again I am going to give the particulars. So far as we are concerned it is not a military secret, although it may be a secret to others. But there it is. When there is an armed fortress and, what is more, when there is all this appeal to hatred and invasion, and language such as that used by the Foreign Minister himself—which, at an appropriate stage, I propose to quote—it is not reasonable to expect that a country will unsettle things that are settled. My Latin American friends will understand that we must let things alone in this case.

It is not reasonable now. Then it must be adequate. Would this be adequate for this purpose? It was Sir Owen Dixon who said that no plebiscite would ever be adequate because, supposing the plebiscite by majority decided for India, he said, there would still be trouble; if they decided for Pakistan, there would be even more trouble. And, what is more, how would the adequacy of this plebiscite be justified in the present conditions?

Oppenheim says further: "It must not be inconsistent with the generally recognized principle of international law"—and that is the main sheet anchor of our position. For the Security Council to take a step in this matter today which does not take our primary position—that is our territory has been invaded—into account would be inconsistent. It does not matter whether there are flaws in our claim. Kashmir was never a part of Pakistan. Kashmir never acceded to Pakistan. Kashmir was in no way historically connected with the present Pakistan, and therefore, its entry into that territory, irrespective of our claims, is an act of invasion.

Assume for the moment, for argument, what is not a fact—that our claims have flaws in them, either legal, political or moral, that would not justify an act which is a clear violation of international law, as I shall point out in the findings of the United Nations Commission. An act of taking troops across our frontiers, being responsible for the aiding of ravage and rapine—that is not in accordance with recognized principles of international law. I will go further and say that many invasions have taken place since the Council asked that there should not be such invasions; and what is more, there has been a withholding of information from the Security Council. This is not in accordance with international law.

International law is based upon the principle of equity, of fair-play and of international morality, and no party can come before this body and ask for equity unless it is prepared to deal it. The rule of equity in civil law is: those who want equity must come with clean hands.

Oppenheim says further:

> If, therefore, the meaning of a stipulation is ambiguous, the reasonable meaning is to be preferred to the unreasonable; the more reasonable, to the less reasonable.

Now, we have so many pundits of English around here. In other words, what does that resolution mean? The reasonable meaning is stage A, then stage B, then consideration of stage C. That is the reasonable meaning, and an unreasonable meaning cannot be read into that document. The purpose of the treaty is to get a settlement in Kashmir—that is the consistent meaning, not the meaning that is inconsistent with the recognized principles of international law. That is the first set of conditions in the interpreting of a treaty. In the second place, the whole of a treaty must be taken into consideration if the meaning of any one of its stipulations is doubtful, not only the wording of the treaty, but also the purposes, the motives, and the conditions prevailing at the time.

There are two things here to be taken into account. Firstly, "the motives that led to its conclusion". The representatives may recall that earlier this afternoon I referred to the anxiety of the Commission to get a cease-fire. I did not do this merely to draw attention to the fact that it had some relationship with this. The motive in getting this agreement was to stop the fighting. Therefore, to talk now of something which would lead to greater violence is not in conformity with this. The second is, "the conditions prevailing at the time". I shall deal with that at length later. Then it is stated:

> The priciple *in dubio mitius* must be applied in interpreting treaties. (Krishna Menon: That, again, is important). If, therefore, the meaning of a stipulation is ambiguous, that meaning is to be preferred which is less onerous for the party assuming an obligation, (Krishna Menon: in this case, we are asked to be the parties who are to assume the obligation, and, therefore, if there is an ambiguity, the meaning that is less onerous to us must be taken) or which interferes less with the territorial and personal supremacy of a party (Krishna Menon: what could be more on all-fours with the present case?) or involves less general restrictions upon the parties.

It is also stated:

> If two meanings of a stipulation are admissible according to the text of a treaty, such meaning

> is to prevail as the party proposing the stipulation knew at the time to be the meaning preferred by the party accepting it.

That is the case here, because when we accepted the two resolutions we accepted the stipulations and the meanings of the letters of assurance and the *aide memoire*. These were known to the otherside. Therefore, that meaning is to be preferred. There are a large number of other conditions, but these are sufficient for my purposes. It is also stated that:

> It is a well-established rule in the practice of international tribunals that so-called preparatory work *(travaux preparatoires)*—i.e. the record of the negotiations preceding the conclusion of a treaty, the minutes of the plenary meetings and of committees of the Conference which adopted a convention, the successive drafts of a treaty, and so on—may be resorted to for the purpose of interpreting controversial provisions of treaty. (Krishna Menon: that is what I have done, I have gone into the minutes of the Commission, into the letters, and so on). The Permanent Court of International Justice has frequently affirmed the usefulness of preparatory work.

Therefore, even if there were, and there is not, a high-level treaty as between our two countries, or an agreement of the nature of a treaty obligation, either registered with the United Nations or entered into with the Secretary-General, it would still be bound by these commitments. Therefore, we say that one of our commitments in this matter is accession. There we have a commitment. We have accepted the obligations which are laid on us under our Constitution. We have not only accepted a legal obligation, but also political and moral obligations, because to throw accession away would be to throw the whole of India into chaos and we would open the door to dismemberment, and our unity and national sovereignty is something which we prize. Therefore, under the circumstances we are not prepared to permit a challenge to the validity of this accession. That is our commitment, and on that commitment we stand.

We have another commitment, to which I shall refer at length later. That is the cease-fire commitment, and we shall honour it. But we have no other commitments.

The Foreign Minister of Pakistan said that in regard to this Kashmir matter, he had no other international obligations than those that are to be found in these resolutions. I agree with that, but to a limited extent in the sense that we have to interpret this agreement in the terms of these two resolutions to which I have referred, but if it means that the international obligations of the Charter are not binding, then I join issue with him. I am prepared to confirm that I subscribe to the view that in the discussion of any procedure, of any particular decision, of any agreement reached, these resolutions are what are binding in the circumstances I have submitted to you. But it would be wrong, so far as we are concerned, for a Member State to argue that there are no other international commitments. The Charter is a commitment for every State, and when the time comes to sum up these observations at the conclusion of these meetings of the Security Council, we shall fall back upon our bounden duty to ask all of you to address yourselves to the provisions of the Charter. Therefore, no Member State, in our submission, may say there are no other international obligations. I feel sure that that is not the meaning of the statement made by my colleague, but I wish to be clear on this point.

Firoz Khan Noon (Pakistan): I am sorry, but that is a misinterpretation of my statement.

The President: You have no right to interrupt.

Krishna Menon: I will read out the quotation. I thought that by not doing so before I could save time, but it will be seen that my slow procedure is the quickest in the long-run. The representative of Pakistan said:

> Pakistan is equally convinced that the international agreement for the plebiscite is one indivisible whole. (Krishna Menon: we agree) No party to the dispute has the right to accept it in part. If India, a party to the dispute (Krishna Menon: which does not exist) makes

> an attempt to freeze the situation as it exists, Pakistan would consider it as a repudiation of the international agreement ... I want to make it clear that Pakistan recognizes no international obligations with regard to the State of Jammu and Kashmir except those she has voluntarily accepted together with the Government of India in the resolutions of UNCIP dated 13 August 1948 and 5 January 1949. (*S/PV.* 761, *page* 37).

I should not have referred to this without quoting it, but I submit that, in my own reading of this, it does not exclude our commitments under the Charter. It simply means that there are no other agreements of the type of these resolutions or plans of that character outside these two resolutions. I was trying, in my statement, to elicit information on this point in the reply of my colleague. So far as the Government of India is concerned, for the moment we assume that this means that, so far as commitments of this kind are concerned, these are the only two resolutions. That is also our position.

Could I now rest on this instalment at this time ?

The President: I should like to know how much more time the representative of India desires in order to finish his statement.

Krishna Menon: I think that another meeting would be sufficient.

The President: I have the feeling that the members of the Council would be willing to stay for another hour.

Krishna Menon: I do not think I would be able to finish my statement in another hour. It will probably take two to two and a half hours, even if I condense everything. The whole of the argument in this case remains. I have a responsibility to the Government of India at this stage, when this matter has come up after five years, with the statements made in the Council with regard to tribal movements and the references to armed concentrations and so on, to bring before this Council all the facts in the situation. I have done my best to make it non-controversial and to stick to the facts and to the record. I have no desire to prolong these proceedings. I would have a considerable personal difficulty in carrying on for another two hours.

The President: If the representative of India requires two and a half hours more, we can adjourn now and resume again at 8-30 p.m., and continue until the statement is finished.

Arkadiev (Union of Soviet Socialist Republics) (interpretation from Russian): Mr. President, perhaps you might find it appropriate, since I see that the representative of India is in a very anguished condition, and I imagine that other members of the Council would also find it difficult to listen to another two-and-a-half hour statement, perhaps for the sake of all of us, and also of course for the productivity of our work, it might be more reasonable if we were to take this matter up again tomorrow after we have rested. Do we need to finish this evening ? Would the President please consider this point ?

The President: What is the pleasure of the Council? If there is no discussion, does that mean that the Council agrees to the President's proposal to resume the meeting at 8-30 p.m. tonight?

Krishna Menon: Am I entitled to speak on this ?

The President: I think this is a decision to be made by the Council.

Krishna Menon: But under Article 32 of the Charter, when I am asked to participate in this discussion, if the Council desires to hear the views of the Government of India, that must be physically possible.

The President: The President will listen to your views.

Krishna Menon: A night meeting would be necessary and warranted in conditions of a different character, if this were a matter of grave urgency which has not waited five years, and now, suddenly, we are called upon to conclude this business tonight. I can submit to you privately the reasons why this cannot be done—and this is in no political context whatsoever. I want to do justice to the presentation of the case of the Government of India, and it is not possible for me to do that more than five or six hours a day. If you insist, Mr. President, upon carrying on the meeting, then I am afraid that part of this case will have to go *ex parte*. This is a very unreasonable position and, with great respect, I suggest that after the normal sitting of the Council, where a very complex matter of this kind has to be submitted over the hours and a great strain is imposed because one has to summarize very much more than one would do if time was not important, for me to continue with the degree of intensive application that is required for this purpose would be difficult. Therefore, I hope that the Council will not hold a meeting tonight. If it does so, it will be the decision of the Council.

Nunez-Portuondo (Cuba) (interpretation from Spanish): I am of the opinion that we should accede to the proposal of the representative of India. If he has two and a half hours more to speak and if he feels that it is physically impossible for him to do so tonight, it is the submission of the Cuban delegation that we cannot possibly have a meeting tonight. I believe that all the members of the Council wish to complete the consideration of this item at the earliest possible time, but it would only be a matter of a few hours if we postponed consideration of this question until tomorrow morning.

The President: If there is no further discussion, there is a proposal by the representative of the Soviet Union to continue the meeting tomorrow morning.

It was so decided.

The President: We will meet again tomorrow at 10 a.m.

III

Krishna Menon: I should like to express my appreciation to the Council for its acquiescence in the proposal made yesterday by the representatives of Cuba and the Soviet Union to hold this meeting this morning instead of last night.

I was dealing yesterday with the responsibility for the non-performance or the non-implementation of the plan that was put forward by the United Nations Commission for India and Pakistan on 13 August 1948 and 5 January 1949, the resolutions of those dates together forming one document —a plan of settlement and not a resolution with the character of a decision. That plan, I pointed out, was a plan which contained contingencies, and, for the performance of Part III, which is the plebiscite, called for the achievement of what are generally called conditions precedent. The issue has been, for a long time, how these conditions precedent should be brought about.

I also pointed out—and I do not want to quote the paragraphs because, in view of the President's impatience yesterday, it is better not to prolong the proceedings more than necessary—that the conditions precedent were formulated by the Commission in the light of the paragraphs I quoted.

In view of the urgency of the cease-fire because of the considerable slaughter that was going on, the very strongly expressed and repeated views of the Government of India on the necessity of avoiding further bloodshed, and the insistence of Pakistan, on the other hand, that the cease-fire could come only after the political considerations—in view of all that, this plan was put forward and accepted by us with these contingencies in it.

However, the important point to remember is this: when that plan was put forward, it was not contemplated by the authors—it was not the intention of the Commission or of the Government of India or of the Government of Pakistan—that this should be something lasting over a period of eight or nine years.

At any rate, before we approach this problem, we ought to look into the responsibility for non-performance.

I not only freely conceded, but I volunteered the point, that, if there is a plan which requires conditions precedent and if one party, wilfully and *mala fide,* impedes the performance of those conditions, then there is a charge of inequitable behaviour against it.

Those are the charges which the Foreign Minister of Pakistan set out in his statement before the Council. On pages 19 to 21 of the verbatim record of his statement, contained in document S/PV.761, there are eleven points put forward to show how India obstructed the performance of Part II. If these were correct, they would not by themselves answer the whole case because, as I said yesterday, there are certain basic conditions which, overruling Pakistan's objections, the Commission laid down, and which are incorporated in these agreements.

Before I attempt to deal with points seriatim, there are two matters which I wish to dispose of. One is that I see before me a draft resolution under the names of Australia, Columbia, Cuba, the United Kingdom and the United States of America. I want to say here and now that I am making this statement today without any reference to the resolution, and the reason I want this to go on the record is that I want the people of my country to appreciate that this resolution has been put forward by its five sponsors before hearing the statement of the representative of India—especially after I said last evening that I still had to argue this case. I am not making my detailed comment on it at the moment. All I want the Security Council to be seized of is this: For the purpose of this morning's statement, I am not taking this resolution into account.

The next point on which I want clarification or a ruling by the President is that I would request reference to sub-paragraphs (5) and (6), on pages 19-20 and 21, respectively, of the speech of the Foreign Minister of Pakistan, in document S/PB.761.

These refer to the good offices of Commonwealth Prime Ministers. Now if the reference implies that this matter came before the meeting of Commonwealth Prime Ministers, then on behalf of my Government I want to register categorical denial. I myself have been present at every meeting of the Commonwealth Prime Ministers since Pakistan and India became members of that group. There has been no meeting of Commonwealth Prime Ministers in the sense that these meetings which are usually convened at convenient intervals were devoted to this matter. This matter was sought to be raised by Pakistan and it was never agreed to be discussed.

If, on the other hand, the Foreign Minister of Pakistan is referring to private conversations that might have taken place between Prime Minister and Prime Minister, or with small groups of Prime Ministers, then I would ask for a ruling from the President. Either these paragraphs stand withdrawn or we have freedom to refer to confidential documents, because my Government cannot take up the position of having the name of our Government and our Prime Minister and of his colleagues used in this way without referring to documents. I would therefore like to have a ruling from the President. I have the confidential reports of these conversations. We have regarded them as top secret documents. But I will take the responsibility, so far as we are concerned, of going into their contents, provided that is the wish of the Security Council.

We cannot have allegations made from private documents without opportunity to use those documents in rebuttal. Therefore I ask for your ruling, Mr. President. Either these paragraphs must stand withdrawn or I will quote from the documents.

The President: The President has heard the statement of the representative of India and he cannot make a ruling on any statements made in connexion with the question before this body. The representative of India has the right to make a reply as he chooses and to make such statements as he may make, as the representative of Pakistan also has the right to make his own statements and deny whatever the representative of India has stated here. But the President cannot make a ruling on a statement made by a representative before this Council.

Krishna Menon: With great respect, that is all I ask for, because the responsibility for the revelation of these conversations does not rest on the Government of India. When confidential conversations are referred to by responsible persons in a forum that is not concerned with that, then the Government of India has no alternative but to tell the whole story, and that is all I ask for. Therefore, I should like to refer to the first proposal of the statement of the Foreign Minister of Pakistan. It is necessary to refer to these allegations seriatum because we are not able to subscribe to these things and, what is more, they are contradicted or modified by the documents available to the Security Council in such a way as to make this picture very different from what is sought to be presented. I will read the first allegation:

> (1) In March 1949, the United Nations Commission convened a joint committee of the India and Pakistan representatives, at which it was agreed that both India and Pakistan would submit their plans for the withdrawal of forces to that committee. Pakistan did so: India first asked for more time and later refused to honour this agreement. (S/PV. 761, p, 19-20).

The charge is that the Commission asked for the withdrawal of forces, that Pakistan offered a plan and that we did not co-operate. If that were true in the way it was put, that is certainly a grave lapse on the part of the

Government of India and may be counted as a point in part of non-performance. I now wish to refer to paragraph 229 of the third interim report of the Commission. The Commission has something very interesting to say about this:

> In early March the Commission received the first concrete indication of the manner in which one of the parties envisaged the implementation of the truce...the Pakistan delegation held (a) that the objective of the truce agreement is to create a military balance between the forces on each side and (b) that the withdrawal of her regular forces depended upon plans acceptable to the Pakistan Government for the synchronization of this withdrawal with that of the bulk of the Indian forces.[1]

What I read out now is the Commission's findings. But in another part of the report, paragraph 169, the Commission says:

> The Government of India did not agree with the premises on which the plans of the Pakistan delegation were based. The Indian delegation informed the meeting that it was unable to respond to the Pakistan delegation by presenting a similarly comprehensive plan, until a basis for agreement was reached. The meetings were adjourned. Subsequently, on 28 March the Commission received the Government of India's own views (annex 16).

What is said in the statement of the Foreign Minister of Pakistan is that the Government of India did not submit its views; the Government of India refused to honour this agreement. But I will read out what the Commission said:

> ...the Commission received the first concrete indication of the manner in which one of the parties...

The Pakistan delegation held such and such a view, and as we pointed out before in our statement, the Commission had already rejected both the (a) and (b) proposals of Pakistan. Now the principle which the Commission had rejected, that was brought before the Commission. The Government of India reiterated its position. What is more, the Commission goes on to say that "on 28 March the Commision received the Government of India's own views". So both parts of that statement are inaccurate.

The next allegation is as follows:

> (2) After many months of efforts, the United Nations Commission came to the conclusion that India was not prepared to withdraw the bulk of its forces from Kashmir and was seeking to cover this refusal by misintepreting the Commission's resolutions on the subject. The Commission, therefore, proposed that the differences arising from the interpretation of the two resolutions—which constitute the international agreement on Kashmir—should be submitted to the arbitration of Admiral Nimitz, the designated Plebiscite Administrator. This proposal was endorsed by a personal appeal from President Truman of the United States and Mr. Attlee, the then Prime Minister of England, in August 1949. Pakistan accepted this proposal: India rejected it. (S/PV. 761, p. 1920).

Apart from the statement in regard to arbitration, there are two definite allegations here that the Government of India misinterpreted the resolutions of the Commission.

What are the facts? It is true that India rejected the proposal for arbitration that was made by the Commission at that time. And may I say, this was not a question of general arbitration; it was arbitration on the topic which we are talking about, and these were the reasons which should have been set out. The arbitrator in this particular case was to have the authority not only to arbitrate on the issue given to him, but also, if necessary, to determine the points on which he should arbitrate. I ask representatives on the Council to show me one instance in the whole law of arbitration where the arbitrator is asked to say what he is going to arbitrate on. That strikes at the root of all arbitration. Arbitration is usually the appointment of a tribunal, to whom a case is referred with a request to give an award or find a reconcilation between two points of view. In this case the arbitrator was asked to arbitrate on whatever he was going to arbitrate on. That is to say, he would be the plaintiff and the judge. This was a novel procedure and without precedent, and could hardly be justified; and I ask anyone to show me an instance in the whole international arbitration procedure where this has been done.

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[1] Security Council Official Records, Fourth Year, Special Supplement No. 7, para. 229.

The main difference between India and Pakistan in this particular matter of arbitration was on the disbanding and disarming of the Azad forces—forces which Pakistan had all along denied were there. There was Pakistan participation; they did not communicate with the Security Council. The Security Council was happily passing these resolutions in total ignorance of what was going on, the information having been withheld, and, later when this matter came up, the Commission gave assurances to us. Mr. Luzano, who was Chairman of the Commission at that time, wrote a letter on behalf of the Commission, which I read out yesterday. The main difference between India and Pakistan was on the disbanding of the Azad forces, because we did not think that a plebiscite could be held, nor could we agree to the idea of an insurgent government being recognized; and certainly it cannot be the idea of the Security Council--as it seems to be the plan going around—that the Security Council is going to stand behind some sort of insurgent authority.

The Commission had given us the assurance that there was to be large-scale disbanding and disarming of these forces and it was on the basis of this assurance that India had accepted the resolution of 5 January 1949. This was, therefore, not a matter for arbitration but for affirmative or immediate decision.

This issue, on which there had been agreement between the Government of India and the Commission, formed the basis of the plan; otherwise we would not have accepted the plan. Before we accepted the plan, we had got this assurance from the Commission that there would be large-scale disbanding and disarmament. We said our position was that we would not be prepared to arbitrate on anything outside the agreed issues; otherwise, what was being asked was that the assurances given, the commitments undertaken on the basis of those assurances, would go by the board. I ask the Security Council whether any other action could have been taken by a responsible Government.

All the facts at that time were known to the Commission. The Commission had come to the conclusion that the presence of these forces constituted a material change. They have said many times in the report that this was what was standing in the way and the whole problem had changed on account of the introduction of these forces from Pakistan and the organization of this enormous Azad army of thirty-two battalions. There was really no genuine dispute, but what we are asked to do is to go to another issue altogether, to strike at the root of the agreement.

The withdrawal of the bulk of the Indian forces referred to in this paragraph was to be agreed between the Government of India and the Commission or its successor. That, as I read out yesterday, is one of the articles of the agreement. The withdrawal of Indian forces has nothing to do with the Government of Pakistan. In fact, Mr. Zafrullah Khan asked that he should be informed as to the plan of this withdrawal. That is to say, our military operations should be disclosed to him. The Commission rejected the idea wholesale. Therefore, it was said that this was a matter for the Government of India and the Commission or its successor. That was the position, and the reason, of course, was twofold. In the first place, India was responsible for the security of this State whose sovereignty had not been questioned. The Commission had said time after time that it could not recognize any other authority.

The forces considered necessary for the retention on the Indian side of the cease-fire line had to be sufficient not only for the observance of law and order, but in accordance with assurances given to us by the Commission and also for the security of the State. Therefore, that was not a matter for arbitration. It had to be agreed upon between the Government of India and the Commission. That is to say, in the background of this resolution and the assurances, there were certain things which were outside the discussion, namely, that this quantum, the past, and everything else were to be decided between the Government of India and the Commission. How can that go to arbitration?

Under Article 4 (*a*) of the resolution of 5 January 1949, the final disposal of Indian and State armed forces—and I said yesterday that the word "disposal" has been interpreted by India as "disposition"—which was to be with due regard to the security of the State and the freedom of the plebiscite, was to be determined by the Commission or its successor and the Plebiscite Administrator, on the one hand, and the Government of India, on the other. There, again, there was no room for an outside body. This was a bilateral arrangement between the Government of India, as the sovereign authority responsible for security, and the Commission.

If arbitration was to be according to the UNCIP resolution, which is all we accepted, Pakistan could not be a party to those arrangements—I laid stress on this yesterday; the Commission agreed that Pakistan had nothing to do with them and had no right to be consulted at all. It was not a matter for us to decide with Pakistan.

For similar reasons India objected to the Security Council resolution of 30 March 1951, which gave Pakistan the right to be consulted, even in vital matters affecting the security of Jammu and Kashmir. Further, if Pakistan was not in full agreement with India, the point was required to be decided by the arbitrator, in whose selection Pakistan would again have the right to be consulted. That is to say, we were asked to agree to the selection of an arbitrator by the two States in a matter with which it was previously agreed that one party had nothing to do. Thus, the resolution sought to reopen, in favour of Pakistan, issues that had been settled by the resolution of August 1948. I said yesterday that our position has been that everything that has followed from the Security Council after this resolution can only arise from that because the parent resolution was the basis of the plan, and this was an attempt to undo it, and we were not willing to agree to that. This later resolution sought to give Pakistan a voice in matters which Pakistan, as an invader of the State, had been rightly denied by the Commission. It sought to transfer to arbitration the right to make vital decisions on which the old resolution required India's agreement.

That is the answer to the second allegation. That is to say, it is true that we did agree to arbitrate, but because we were asked to arbitrate on questions which were not amenable to arbitration, it changed the basis of our agreement.

In December 1949 the President of the Security Council, General McNaughton, acting as the Council's mediator in this dispute, formulated certain proposals for the demilitarization of the State of Jammu and Kashmir. Pakistan accepted these proposals; India rejected them.

What are the facts here? General McNaughton tried to place India and Pakistan on an equal level in this matter. Our position from the very beginning, irrespective of what the Security Council may say, has been that this is not a dispute over territory. This is a complaint about aggression, and, irrespective of the assumption that there may be flaws in India's claim that the invader has no rights, General McNaughton's proposals tried to treat us as though we were two co-defendants in that matter. What is more, he equated Azad Kashmir with the Jammu and Kashmir Government and gave the former also a status in the matter, despite the Commission's definite finding against it.

He gave a formal recognition, therefore, to this Government which not even Pakistan recognized at that time. Pakistan did not recognize the Azad Government—perhaps for other reasons, but there it is.

These proposals of General McNaughton failed to take account of our respective positions in this dispute and did not preserve the agreements of 13 August and of 5 January. This only puts before the Security

Council the position that I stated yesterday and shows that it was not something that we made up for this meeting. This has been our consistent position all along.

Now we go to paragraph 4.

> The Security Council then appointed Sir Owen Dixon and authorized him in March 1950 to bring about the demilitarization of the State within five months. He formulated the demilitarization proposals in July 1950 and discussed them with the Prime Ministers of India and Pakistan. Pakistan accepted those proposals; India rejected them.

First let me say, by way of introduction to this particular point, that the whole of the proceedings after 5 January are not concerned with the whole issue. They are only concerned with part 2, to bring about demilitarization—nothing else. It is a very small compass.

Sir Owen Dixon, now Chief Justice of Australia, went to India and to Kashmir and to Pakistan and he tried to establish, in the same way as General McNaughton did, a parity between India and Pakistan. What is more, he also brought in Azad Kashmir as though it were a *de jure* Government, and he also tried to establish parity between the State forces and militia on the one hand and Azad forces on the other.

It is not correct to say in this connection that we rejected Sir Owen Dixon's proposals. Sir Owen Dixon's proposals are interesting in this connexion. He came to two or three important conclusions, not that we accept them, but the Security Council should know about them. One conclusion he came to was that a wholesale plebiscite was neither desirable nor possible. So he suggested alternative plans for what has been called a compartmental plebiscite. At that time—and I want to say now that the Government of India is making no fresh commitment in this matter—we said we were prepared to look at it. We said at that time that we were prepared to examine this proposal, that is to say, to take a plebiscite over the different areas or perhaps agree that some parts had to go to India and other parts had to go to Pakistan. At that time we were certainly prepared to examine those proposals. It was not India that rejected them. Pakistan rejected them wholesale. That is the record.

However, there is something else that Sir Owen Dixon said. I referred to it yesterday and I shall refer to it again. That is that when they crossed the boundary they violated international law—a polite way of saying that they invaded another country.

Now I go to paragraphs 5, 6 and 7. I shall take all these together for your convenience, Mr. President, and the convenience of the Council, because they all deal with the same proposition. I should like to restate that there was no question of this Kashmir question being on the agenda of the Commonwealth Conference of Prime Ministers. The Government of India has objected and will continue to object to the discussion of this problem in any international forum other than the Security Council, which is seized of it. There has been participation by the United Kingdom, the United States, Pakistan, France, Iraq, Philippines and various other countries in attempts to raise this matter, in however superficial a way, in other forums, and we have on each occasion protested to each Government and said that it was a wrong action to take. We continue to do so, irrespective of the responses they make.

It would be very wrong for me simply to say that there was no Prime Ministers' meeting dealing with this or that no formal objection was made. There were conversations in 1951—I believe it was the second Conference after India decided to become a republic. There were talks with Mr. Menzies, the Prime Minister of Australia. I believe that there were talks before with the late Mr. Mackenzie King. There were always talks on large numbers of subjects; some of them had nothing to do with this matter at all. There was also an occasion when Mr. Menzies and Mr. Attlee sat together with my Prime Minister for a private conversation, and Mr. Liaquat Ali Khan, the Prime Minister of Pakistan was also present.

In view of the delicate nature of Commonwealth relations and the bringing in of the names of these Prime Ministers, and for various other reasons, which will become more apparent when I read this resolution—and if I can claim the attention of the representative of the United Kingdom—I should like to read this note recorded at that time by my Prime Minister:

> This evening I attended an informal conference about the Kashmir question. This was originally fixed to be held at 10, Downing Street, but, owing to Mr. Menzies' illness, it was decided to hold it in Mr. Menzies' room at the Savoy. We met at 8-30 p.m. The Prime Ministers of the United Kingdom, Canada, Australia, New Zealand, Ceylon and Pakistan were present. We discussed the matter for about an hour.

I might recall here that the reason for having this informal meeting was that we had refused to have the matter discussed formally in the Prime Ministers' Conference.

> Mr. Menzies and Mr. Attlee made some preliminary remarks about the extreme desirability of the Kashmir issue being settled, more especially because of the world situation. They referred to a plebiscite having been agreed to and only the conditions relating thereto being subject to dispute. Mr. Menzies expressed his opinion that probably a limited plebiscite would be more desirable. He added that, as there were legitimate apprehensions in the mind of India in regard to the security of the State, it should be easily possible for a brigade or so of Commonwealth troops to be placed there for security reasons till the plebiscite ended. Australia would be glad to provide such troops as it was thought it would be a service rendered to the cause of world peace. Some reference was also made to the heavy expenditure on the defence of India and Pakistan. (Krishna Menon: Then my Prime Minister gave his reply.)
>
> Mr. Attlee then turned to me. I said I was at least equally desirous of a settlement of the Kashmir question. This was to the advantage of both India and Pakistan, and we had made many attempts but thus far without success. They show obviously that it was not quite so simple as it appeared on the surface, or otherwise it would have been settled long ago. No doubt it will be settled sooner or later. I gave a very brief account of some of the difficulties and points that had arisen and added that two aspects were prominently before me. One was that no steps should be taken which might lead to an upsetting of the somewhat unstable equilibrium that had been gradually established between India and Pakistan during these past few years.
>
> There was a grave danger that if a wrong step was taken it would rouse passions all over India and Pakistan and raise new issues of vital importance. That would be a tragedy.
>
> The second point was that I could not deal with any proposal without reference to my colleagues in Delhi and Kashmir. So far as the Government of India was concerned we had gone there on the invitation of not only the legally constituted Government but also the largest popular party. Our responsibility was confined to defence, foreign affairs and communications. For the rest, the State Government was responsible, and we could not interfere with its discretion though we could advise them. It was neither possible nor advisable for us to come to a decision without the concurrence of the State Government.

This was in the early stages of our accession. The relations had not yet been built up.

> Then the Prime Minister of Pakistan stated that the said Government was just a puppet appointed by me, and I could remove them or change them at any time. I took exception to this and told them something about the background of Kashmir and the National Conference and Sheikh Abdullah.
>
> I had given a very brief resume of the events in Kashmir in the last few years, finishing up with Dixon and the proposals. I pointed out that Dixon had concluded that an over-all plebiscite was not feasible and had therefore explored the possibility of a partial plebiscite. To the general principle of this I had agreed, subject, of course, to the other matters connected with it being considered and decided upon.
>
> I made it clear that there was no point in discussing these matters until the principle was accepted by Pakistan, because at that time, in the discussions with Menzies, this agreement was to be by Pakistan and not by us, because we had agreed, subject to details, to the principle that Sir Owen Dixon had put forward.
>
> Mr. Liaquat Ali Khan indignantly repudiated this. The Prime Minister of Pakistan thereupon said there was no question of an over-all plebiscite not being feasible. There might be some difficulties, but obviously it could be done. I agreed that it could be done, though it might take time.
>
> The question of feasibility did not refer to the practical difficulty of having an electoral roll, but, according to Dixon, to various other

> factors (Krishna Menon: which are set out in the Dixon report and some of which are referred to briefly in these conversations. I continue to quote):
>
> Mr. Menzies stated that he had not been able to understand why the Government of the State (Krishna Menon: this is important because it comes from Mr. Menzies) should be pushed aside or suspended because of the plebiscite—(Krishna Menon: and here I would point out that that was exactly what Pakistan was pressing for. Mr. Menzies went on):
>
> It could very well continue, although matters connected with the plebiscite might be handed over to the Plebiscite Administrator. Attlee agreed with this.

Now, the Government of India, I would recall, has raised no objections in this connexion—provided other conditions are satisfied. The conversations among the Prime Ministers then touched on the ethnic and linguistic divisions of the State. I quote from the conversations:

> I told them, also, that there was a basic difference between our approach and Pakistan's to the two-nation theory, and the insistence on religious differences coming into politics. While we had reluctantly accepted certain facts we never accepted their theory, and we were not prepared to apply it to Kashmir in any event. (Krishna Menon: and here the reference is to the theory of a Muslim State and a Hindu State). That would be bad for Kashmir, but would be worse still for India and for Pakistan. It would go counter to the principles that governed us and might produce upheavals both in India and Pakistan. We had only recently witnessed an upheaval of this kind in Bengal, which had with difficulty been controlled by the Agreement between the two Prime Ministers.
>
> Mr. Attlee pointed out rather warmly that past history did not quite fit in with what I had said. The division of India had largely been based on a religious basis. He did not like this religious basis at all, and he had tried to avoid it, but facts were too strong. Further, he said that ethnic and linguistic divisions were equally dangerous, and we in India were having to face this difficulty in various parts of the country. I said that we were not enamoured of ethnic and linguistic divisions, but, in the circumstances, we certainly thought that any religious approach to a political problem was dangerous and explosive. We had never accepted that principle, and we did not propose to do so in the future. Right from the beginning of the Kashmir trouble, we had laid stress on this fact and had informed the United Nations Commission repeatedly that this appeal to religion must be avoided. In spite of this, the Pakistan Press was full of religious appeals and calls for *'jehad.'* (Krishna Menon: that is, holy war).
>
> If this kind of thing was going to take place before and during the plebiscite period, then there would be no plebiscite but civil upheaval, not only in Kashmir but all over India and Pakistan.
>
> Mr. Menzies then said that he quite agreed that religion should be kept out of the picture, and he had been much disturbed when he saw the Pakistan Press in Karachi.
>
> (Krishna Menon: And this is Mr. Menzies speaking, not the Government of India):
>
> which was writing most irresponsibly on this subject....
>
> The Prime Minister of Ceylon was silent throughout. Mr. Attlee then referred to river waters in connection with Kashmir and mentioned the international committee set up by Canada and United States. I mentioned that Mr. St. Laurent had drawn our attention to this last year, and I had stated subsequently that I would be perfectly agreeable to having subsequent consideration of the water problem as between India and Pakistan.

The delegation of Pakistan has not raised this objection during this series of meetings of the Security Council, but, had they done so, we should have had the answers. I continue to quote from the conversations of the Prime Ministers:

> The Prime Minister of Pakistan at one stage referred to ethnic divisions of Kashmir and said that, if necessary, a plebiscite could be held separately in these areas. At no time, however, did he accept the idea of a partial plebiscite. He insisted on an over-all plebiscite for the State, though this might be taken separately in different areas—presumably to allow these areas to decide for themselves.
>
> As Mr. Menzies was not feeling too well and had a temperature, the conversations ended rather suddenly at about 10 p.m. Mr. Menzies concluded it by saying that we might perhaps think over the various suggestions made in the course of the conversations. These were, according to him, that, firstly, the State Government should not be touched. (Krishna Menon: Now, this is Mr. Menzies' opinion) and should continue except in regard to functions relating to the plebiscite: secondly, the Commonwealth might provide a security force and thirdly, the plebiscite might be held in different areas.

In the course of the conversations, no reference was made either by Mr. Liaquat Ali Khan or by me to the proposal about a Commonwealth force being sent. There was no mention of these talks being resumed.

I am sorry to have had to read out this long document. However, we have other matters to consider in relation to the countries involved—particularly in relation to Australia, which, though separated from India by miles of sea, is a very close neighbour of ours; in fact, we hope, as time goes on, to establish even closer relations with Australia than we now have. That is why I have read out this document.

The President: I call on the United Kingdom representative on a point of order.

Sir Pierson Dixon (United Kingdom): I am sorry to interrupt the representative of India, but I should like to make this brief observation.

Of course, I fully recognize that, since the representative of Pakistan has made an allusion to the discussions among the Commonwealth Prime Ministers, the representative of India naturally wishes to say something in that respect. I should, however, like to put this consideration to him, through the President: Of course, Mr. Menon is perfectly free to do what he likes in this respect, but, in view of the particularly intimate nature of these discussions among the Commonwealth Prime Ministers, I wonder whether it is desirable to give this textual account which he has been giving. I say this simply with the object in mind of preserving what is a rather special and particular institution—an institution which the three representatives of Commonwealth countries seated round this table value greatly, I know.

The representative of Pakistan made an allusion to these discussions. It seems to me that a summary is quite different from a textual account.

I have raised this point of order merely as a domestic concern of the three representatives of Commonwealth countries seated at the Security Council table.

Walker (Australia): I should like briefly to associate myself with the remarks made by the representative of the United Kingdom and to endorse his suggestion that it might be preferable if we did not follow the practice here of going into private conversations. I would just emphasize the fact that Mr. Menon read from his own Prime Minister's account of the private meetings. It has not been the practice in the past to publicize such private conversations. Of course, I recognize the right of the representative of India to bring before the Security Council any material which is at his disposal.

The President: The position of the Chair on the point of order raised is clear. On matters mentioned by representatives before this Council, if they are not insulting or libellous, the Chair cannot make any ruling. However, the representatives of the United Kingdom and of Australia have made an appeal to the representative of India, and I refer that appeal to him.

Sir Pierson Dixon (United Kingdom): I think that I may have spoken of three members of the Commonwealth; of course, I meant four.

Krishna Menon: I do not intend to take seriously Sir Pierson Dixon's forgetting one member, the sub-conscious mind projecting itself. I am prepared to leave it at that.

I must say that this intervention by the representatives of Australia and the United Kingdom is most extraordinary at this stage of the discussion. I can only conclude that, because of the general fatigue caused by listening to me, they could not have heard the point I raised with you, Mr. President. That would have been the time for the representatives of the United Kingdom and Australia to have said that they agreed with the representative of India that these matters should not be aired here, so let the representative of Pakistan, who has circulated these allegations all over the world, formally withdraw them. I am surprised beyond measure to see a diplomat of the experience of Sir Pierson Dixon telling me that when charges of dishonesty, charges of a serious character of breaking an agreement and of not trying to honour the second part of this agreement, are categorically made in the statement of the representative of Pakistan. I should not reply to them.

I presumed that the representatives of Australia and of the United Kingdom would have read the statement of the representative of Pakistan. What does it say? At the end of paragraph (5) it is stated "India rejected it." (*S/PV.*761, *page* 19-20) At the end of paragraph (6) it is stated "Pakistan accepted this proposal; India rejected it". (*Ibid, page* 21) At the end of paragraph (7) it is stated "Pakistan accepted this; India once more rejected it". (*Ibid*) The same thing is repeated all the time. These are definite allegations which reflect upon my Government and upon the Prime Minister of India, who participated in these conversations. I was entitled to read them, and my responsibility lies only with my Government.

Secondly, I should like to say here that I yield to no one in my desire to maintain Commonwealth relations, and I suppose that in my time I have contributed as much to this as anyone else at this table. I deeply regret that Sir Pierson Dixon did not raise his objection before, and I resent the observation of the representative of Australia that the account I was reading was my Prime Minister's account, thereby implying that it is not to be trusted. That may well be, but there is a different way of putting it. In that case, since the matter is now in court, let the Prime Minister of Australia come here and say what happened.

The time for this point of order was earlier than now, but even at this time I am prepared to have it taken out of the record, provided that the representative of Pakistan takes paragraphs (5), (6) and (7) out of the record. Why does this extreme sensitivity arise in regard to us? Why did not the representative of the United Kingdom, as the senior member of the Commonwealth, jump up and say, "It is not right for you, who are so close to us, tied to us with military alliances, and who we have always supported. Why don't you withdraw this, since it is not decent to refer to private conversations".

Am I to sit here and hear my Government challenged, and not use the material at my disposal? I went out of my way when I came here this morning to try your patience, Mr. President, by asking you to deal with this matter, and I think it is entirely wrong that an attempt should be made to convey the impression that we are behaving in a way that is inconsistent with all the nice things that the representative of the United Kingdom said. One way to preserve Commonwealth relations is to appreciate that it is a two-way relationship.

Sir Pierson Dixon (United Kingdom): in view of what my colleague from India has said, I must make it clear that all I appealed to him to do was not to read out the textual account of these private conversations. I did not suggest that he should make no allusion to them, because my colleague from Pakistan has already made that allusion. As I said when I raised this point, clearly my colleague from India will wish to make a reply. The only point I was making, and I had hoped it was clear to the Council and to my colleague from India, was to suggest to him the undesirability of reading out a textual account which, as we have heard, contains a lot of quite intimate remarks about peoples' health and that kind of thing. It does not seem to me that it is conducive to the development of this discussion to do it in that way, and I should have thought that was a perfectly reasonable point.

With regard to the time when I should have raised that point, that surely is entirely within my discretion. I must say that it never occurred to me that Mr. Menon would in fact read out actual textual accounts. Had I thought that, I might have raised the point when Mr. Menon asked for a ruling.

Walker (Australia): I said that I thought that the representative of India was at liberty to use any material and information at his disposal. In my concluding remarks, I only intervened in support of my colleague, Sir Pierson to reinforce his appeal that detailed records of these private conversations should not be read out here if that could be avoided. I think that Mr. Menon misunderstood my remark that the record from which he read was his own Prime Minister's record. At private conversations the various participants normally keep their own records, and it is certainly not my intention to introduce any such competing material or to make any suggestions at all regarding the accuracy of the record kept by the Prime Minister of India. I just did note that the document being read from was not an official report of the Conference but just a private record.

The President: While it is interesting to listen to this British Commonwealth family discussion, an appeal has been made to the representative of India, and the representative of India may proceed.

Krishna Menon: With great respect, I submit that this is not a "family discussion". It is a point of order raised in connexion with the proceedings of the Security Council. If, in the exercise of your office as President, you at any time call me to order I will obey you. But I am not going to be pushed into the position of not stating the position of my Government. I look around this table and I know that I have got to fight my battles. We will see more about it in the subsequent meetings. The record is there.

I stated categorically and very plainly that I was going to read the notes of these discussions and that is in the record. Therefore, there can be no reason for Sir Pierson Dixon to tell the Council that if he had known or if he had thought that this was as intimate as this, that and the other and something else was going to happen—I do not think that is correct.

In what position is the representative of the Government of India? Certain allegations are made about a private conversation by one party, a conversation at which I was not present. Would the Council have been satisfied if I simply had said that paragraphs (5), (6) and (7) (*S/PV.761, pp.* 19-20, 21) are inaccurate or if I had given an incorrect narration of it? When the representative of Australia tells me "That is your Prime Minister's record", he should have told me that "That is your version of what your Prime Minister's record is". That would be another step removed. Therefore, I had no option but at the same time, if I am allowed to, I will make an appeal to Sir Pierson Dixon to exercise some degree of fair play in dealing with different members of the Commonwealth—at least in public. As an earnest of my intentions, I am prepared, if the President agrees, that in the written record a summary which does not relate to the matters which are relevant to these items (5), (6) and (7) may be included. The only reason I read everything out was that I did not want it to be said afterwards that I was selecting extracts. Therefore, as I said, I do hope that the representative of the United Kingdom will be able to follow the practice that has obtained in the past of at least in public exercising some degree of fair play as between two members of what the President calls "the family". The objection should have come several days ago when these items (5), (6) and (7) were read out. I should have objected then, but I did not want to interrupt because the President would have called me to order as I am not a member of the Security Council. I therefore say as an earnest thereof that I am prepared to have inserted in the official records only, if the President agrees with us that that is a correct summary of what I said here, a summary of the contradictions or the untrue allegations that are made in these paragraphs (5), (6) and (7). I think that in the position we find ourselves here it is necessary for me to substantiate every statement I make from the record. It may be boring, but then we have suffered in the past in this discussion by trusting too much to the good sense of everybody all around. We therefore propose to state our case in such a way that at least posterity will know where the truth is. Therefore, this is my response to the appeal of Sir Pierson Dixon. I do not expect any response in return. Not that it would not come, but I do not except it. Is that agreable to the President?

The President: Yes.

Krishna Menon: Now we come to paragraph (8) (*S/PV.*761, *p.* 21) which refers to some mediation or some endeavour by the then President of the Security Council, Mr. Muniz. This is the same point about arbitration, so I do not want to repeat the argument which I have given. Paragraph (9) also relates to the same thing.

Paragraph (10) relates to the intervention of Dr. Graham, the United Nations representative, stating that he "put forward a number of proposals on the subject of the demilitarization". It states that "each one of these was accepted by Pakistan, but rejected by India". Now, there can be no objection to going into the facts of this case because Dr. Graham is not a member of the Commonwealth. The full position in regard to paragraph (10) is that India also accepted and not, as was said here, that India rejected it. India accepted the proposal that demilitarization should be a single and continuous process. That is the first denial. The second is Pakistan's assertion that it accepted without exception all demilitarization proposals which were rejected by India, that is not correct.

Dr. Graham suggested in his proposals of 4 September 1952 the following criteria for fixing the quantum of military forces on each side of the cease-fire line, the actual figures to be decided at a conference of civil and military representatives of the two Governments. On the Pakistan side of the cease-fire line a minimum number of forces are required "for the maintenance of law and order and of the cease-fire agreement, with due regard to the freedom of the plebiscite". That is Dr. Graham's proposal.

On the Indian side, a minimum number of forces are required "for the maintenance of law and order and of the cease-fire agreement, with due regard to the security of the State and the freedom of the plebiscite". India considered that these principles—and this is where the contradiction comes in, the contradiction to the Pakistan allegation—were conceived in the right spirit and as a basis for the evolution of a suitable definition of functions of the forces on both sides of the cease-fire line.

India considered that the principles contained the germ of a settlement but despite several efforts to evolve a suitable draft in terms of the language used in the Commission's resolution, no understanding could be reached with the Pakistan Government. Paragraph 10 says it was accepted by Pakistan and rejected by India; the facts are exactly the reverse.

From the informal discussions in the Indian and Pakistan Committees in December 1953, the Indian Committee suggested that after the withdrawal of the Pakistan Army the disarmament of the Azad forces which, as will be remembered, was part of the assurances, and the withdrawal of the bulk of the Indian forces there should remain 21,000 Indian troops in addition to the State Militia on the Indian side and a Civil Armed Force of 6,000 men on the Azad side, half 'Azad' half 'non-Azad', all of them armed, if necessary. The Indian side therefore made some concessions in this matter: first, a substantial increase in the civil armed forces on the Pakistan side, which was totally against the assurances that had been given to us, from the 4,000 originally proposed to 6,000; secondly the readiness to come to a satisfactory solution about the ratio between the armed and unarmed forces, as well as the type of equipment to be supplied and even to the extent of all the civil force being armed, if necessary—previously India had insisted that half of the force should be armed and the other half unarmed; thirdly acceptance of the Pakistan point of view about the security of the northern areas and the consequent need for the retention of their scouts, that is to say, as a matter of compromise although it no longer binds us—and I want that to go into the record—

we even agreed that in the places which these people have militarily occupied we were prepared to recognize the existence of the scouts which were established, as I shall point out later, under the British administration and who surrendered this territory without anybody's authority. In spite of these concessions, the Pakistan Committee did not accept proposals. I ask whether that corresponds to the allegations made in the paragraph referred to.

Paragraph 11 deals with the resolution adopted by the Security Council at its 611th meeting, urging:

> ...the Governments of India and Pakistan to enter into immediate negotiations under the auspices of the United Nations representative for India and Pakistan in order to reach agreement on the specific number of forces to remain on each side of the cease-fire line at the end of the period of demilitarization, this number to be between 3,000 and 6,000 armed forces remaining on the Pakistan side of the cease-fire line and between 12,000 and 18,000 armed forces remaining on the Indian side of the cease-fire line.[1]

Our answer to this is that while the Government of India could not accept a resolution which suggested a number of forces which in India's view was insufficient for security, the Government of India did enter into further negotiations with Dr. Graham —and it is only normal to suggest that the Government of India must be the judge of what forces are required for the security of the forces themselves in this very large area. There was no question of total rejection at that time; we did enter into negotiations with Dr. Graham afterwards.

That concludes the comments with regard to the allegations made. It will therefore be seen that out of these eleven statements made, every one of them is incorrect. In the majority of them, the position is exactly the reverse. And if arguing a case before this body has any value on the decisions it makes or any impact on the Governments represented here, I beg to submit that this refutation, with chapter and verse from the documents, must be regarded as an important item.

Therefore, the charges of non-performance, in my submission, are wrongly laid at our door. On the other hand, while we are not responsible for the conditions of non-performance, as I have already pointed out, we went a long way, even departing from the assurances we had received, even allowing these rebel and Pakistani forces on the other side to be armed and virtually taking into account the position that time had passed and some crystallization had taken place. All that went by the board. Therefore, it is not as though we did not try very hard, it is not as though we did not meet Dr. Graham or Sir Owen Dixon, or any of these people, or even that the Commonwealth Prime Ministers agreed with the view of the Pakistanis.

At this stage, especially in view of the intervention of the representative of Australia, I will take the liberty of reading paragraph 21 of Sir Owen Dixon's report to the Security Council which is an important paragraph. And if the Security Council decides, and I hope it will, that the primary concern is obedience to the Charter and the sanctity of the provisions of the Charter with regard to territories, then it will pay heed to this. This paragraph states:

> Upon a number of occasions in the course of the period beginning with the reference on 1 January 1948 of the Kashmir dispute to the Security Council, India had advanced not only the contention to which I have already referred that Pakistan was an aggressor, but the further contention that this should be declared. The Prime Minister of India, at an early stage of the meeting (Krishna Menon: that is, the meeting with Sir Owen Dixon) made the same contention and he referred to it repeatedly during the conference. I took up the positions, first, that the Security Council had not made such a declaration; secondly, that I had neither been commissioned to make nor had I made any judicial investigation of the issue; but thirdly that, without going into the causes or reasons why it happened, which presumably formed part of the history of the sub-continent, I was prepared to adopt the view that when the frontier of the State of Jammu and Kashmir was crossed, on I believe 20 October 1947, by hostile elements, it was con-

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[1] *(S/PV.761, page 21)*

> trary to international law, and that when, in May 1948, as I believe, units of the regular Pakistan forces moved into the territory of the State, that too was inconsistent with international law (S/1791, *page* 29).

We have not held back anything that is used against us. But this was finding of one of the investigators who, on balance, was not favourable to the Indian position and had a considerable number of reservations. But on this issue, with his judicial training and with the facts before him—and every lawyer knows that whatever may be the right of the occupant, no trespasser has a right to priority—he said that. So here is a categorical statement in a report of the U.N. Representative that there was an aggression.

Therefore, we say that, even assuming for argument's sake—which I do not assume and I do not ask the Security Council to accept—that India has not been forthcoming in all these matters, the primary question remains that Pakistan came here as an invader; it trespassed into territory which was not its own; it tried to change the situation by force of arms—we did not obtain accession by force of arms—it tried to unite Kashmir with its country by force of arms and, what is more, the worst part of it was that it did not keep the Security Council informed about it and kept the information away from the Security Council not only once but continually and this has been repeatedly referred to in the report of the Commission.

Another condition that the Commission laid down—and as I said before they were obsessed by this conception of the cease-fire when this agreement was concluded—that they realized that it was necessary to create an atmosphere of settlement. Our submission and the statements of Pakistan Ministers are included in document 2. I want to say that this document is not up to date or even complete. A great amount of vitriolic abuse has been showered on our country and our statesmen by name, some of which is unprintable and some of which I would like to read out later. There is so much that I can give you only samples.

That is, in our opinion, a serious condition that has seriously affected the non-implementation. That is to say, it is not possible to agree to open out one's country to the entry of other people during a plebiscite period or to throw the whole of the established conditions into an unsettled state when, on the other side, there is always this campaign of war. Some of these statements, which I do not propose to read out, are by members of the Legislative Assembly. The Pakistan Government may say that they are not by the Government—but they are Government statements. There is the press of Karachi, and papers founded by Mr. Jinnah himself, and statements of their own Ministers.

For example, there is a statement by Sardar Abdur Rab Nishtar, who was at one time in charge of Kashmir affairs and was the Governor of West Punjab—not an irresponsible person. This is what he said:

> Mr. Nehru understands only the language of force. We will have to exhibit our strength if we want to take Kashmir.

Another statement:

> We would not mind being cut into pieces but will certainly conquer Kashmir.

These are the people who accepted the agreement.

Then there is this statement by the Chief Minister of the Northwest Frontier Province, from whose territory these raiders came in the beginning:

> You can take it from us that the day we become desperate and lose all hopes of a just solution of the problem, not only the entire Pathan population of Pakistan and the tribal areas will rise up for the holy 'Jehad' in Kashmir, but our brothers from across the Afghan frontier will also throw in their lot with us for the cause.

That is an invitation to another country for a military attack upon our own people. The Governor of West Punjab, Sardar Abdur Rab Nishtar, also made this statement:

> So long as a single Pakistani is alive, nobody dare snatch Kashmir from Pakistan by force.... if the problem is not settled immediately, the whole of Asia would be engulfed in the flame of war which might lead to a world conflagration.

The *Times of Karachi* of 16 August 1956 contains the following report of a statement made by Chaudri Mohamed Ali, who was then Prime Minister of Pakistan and who is, I believe, coming to Washington shortly as Ambassador:

> I am ready for the liberation of 'Kashmir', he said, and added, 'but I want the people to get ready'. The freedom of Pakistan would not be complete without Kashmir, he asserted, and exhorted the people to acquire the spirit of unity, faith and discipline....He said the Kashmir dispute was now going before the Security Council (Krishna Menon: that refers to this meeting). but asserted that the nation would not rest there.

That statement was by the Prime Minister, by a man who is reputed to be a man of extreme moderation in language. We are told in his statement that this reference to the Security Council is only preliminary to other action. That is what the Foreign Minister of Pakistan told us the other day—and I shall refer to that later. That is to say, the Security Council is to be given a chance—but, if necessary, "we will do something else".

It would be taxing to the Council if I were to read a great deal of this material. Some of it, as I have said, is from the newspapers, and any Government can say "We have a free press and they can print what they like"—though it may not correspond with the facts that obtain in a particular place.

The Chief Minister of West Punjab had this compliment to pay to the Security Council:

> If the United Nations proves to be a band of thieves (Krishna Menon: that is all of us) we will have nothing to do with it. We will prove that we can liberate Kashmir with the strength of our arms.

In this particular matter, it is also to be noted that even foreign observers who are not friendly to India in their comments on these matters, such as magazines published in the United States, have pointed out that the whole conception of the State of Pakistan in regard to its alliances is to attack India.

Here is Mr. Falk, of Chicago, in *Newsweek*:

> Pakistan is taking the United States for a ride. This is evident from your report and from my observations in that country, where I worked until recently. Pakistan thinks it did us a favour by joining SEATO and the Baghdad Pact. They do not worry about the danger of Russian aggression. Pakistani leaders merely humour our concern about Communist expansion in order to get economic and military 'Bakshish' and to strengthen their hand against India.

And here is Mr. A. T. Steele, writing in the *New York Herald Tribune*:

> The average Pakistani thinks very little about the Communist threat if he thinks of it at all. His hostility is toward India rather than the Soviet Union. And he assumes that in the event of a showdown with India, the American military supplies will be drawn upon.

In regard to these last two statements, I want to say that our quoting from them has no reference whatsoever—and I want to say this categorically—to the intentions of the United States in regard to this matter. We are talking only about Pakistan opinion.

I will put these statements aside now. One could read all of them—and I hope the members of the Council will. They do not make very pleasant reading, but it is reading that is pertinent to the argument that we have put forth.

Then we have the situation involving the whole constitution of Pakistan itself. That is entirely an internal matter and we have no wish to interfere in it. But in so far as it affects this situation of a State which is heterogeneous in character, where the people who do not belong to the Islamic religion do not have equal rights with the others in certain respects and—if that is challenged I will quote from the constitution, if it comes to that—it is not possible for us to take the view that the campaigns that go on are not of this character.

The next point I wish to refer to relates to the various violations that have taken place. And I want to say here and now that my Government does not wish to make a point of the normal kind of skirmishes and crossings of the frontier that can take place on a military cease-fire line which represents no natural division but is a line which is reached for convenience, so that the local villagers may not know about it, may go and snatch cattle, and so on. We are not referring to that kind of thing.

There have, however, been major incidents. I do not want to burden the Council with a description of a whole set of them. I shall therefore refer to only one—and that is what has been called the Nekowal incident.

Nekowal is a small village on the Indian side of the Jammu-Sialkot border. I refer to this incident because it developed into the proportions of a minor battle. On 7 May 1955, the Pakistan border police—and these police are not just boy scouts in uniform, but armed police—opened fire without warning at an Indian party consisting of Major Badhwar, an officer on loan to the Central Mechanized Farm—he was there not on military duty—nine civilian employees and a small military escort of eight persons who were supervising the ploughing of land at a distance of about 500 yards from the village, on our side.

As a result of the firing by the Pakistanis, Major Badhwar and five other ranks and six civilians were killed, and one of the other ranks was wounded. We lost an officer and five men there.

On 8 and 9 May, the United Nations observers conducted a joint investigation at the site of the incident, on a complaint lodged with the United Nations observers' team at Jammu. The observers declared this incident to be a border violation by the Pakistan border police.

Immediately on receipt of the information about this incident, the Government of India lodged an emphatic protest with the Government of Pakistan and, in accordance with the internationally accepted principle for claiming compensation, demanded compensation of the Government of Pakistan, in the amount of 1,200 thousand rupees, for the moral and material wrong done to the Government and nationals of India as a result of this incident.

After a long correspondence in regard to the liability to pay compensation—not with regard to the incident, but with regard to the liability to pay compensation—the Prime Minister of Pakistan wrote as follows on 19 May 1956, and I should like to say that this is not a private letter but one that has been quoted in Parliament:

> While, for reasons given above, I do not consider that my Government is at all liable to pay any compensation in respect of the Nekowal incident, I am personally conscious of the human suffering involved in an incident where a number of lives have been lost. Having regard to this aspect of this matter, we would be prepared to make an *ex gratia* contribution of one lakh rupees to the rehabilitation of the relatives of those who lost their lives on the Jammu side of the frontier.

The point about this is that we agreed to this *ex gratia* arrangement in order not to exacerbate the situation.

This is only one of the incidents that have taken place—and, by the time the United Nations observers get around to it, the trouble has already occurred.

There have been a considerable number of attempts at probing our frontiers. If I so desired, I could have given you a number of instances. They have taken place not only on the cease-fire line—and I am confining myself to Kashmir—but there have been offensive actions against us on the Indo-Pakistan border. And may I say here that we have few troops on this border. When statements of that kind are made, they are inaccurate. We have armed police outposts. And there have been skirmishes which have resulted in considerable loss of life in one or two instances, in which the army had to be called in.

Therefore, the responsibility for non-performance in regard to the conditions of Part II, in regard to the violations of international law, in regard to the campaigns of hatred that go on, and in regard to the non-maintenance of the peaceful atmosphere, is not on our side.

There is one other aspect of this item that I want to mention before I leave it, and that has to do with the northern areas. The northern areas are those areas of Chitral, Gilgit and Baltistan—there is a map attached to one of these documents—which are very sparsely populated areas and which, to a very considerable extent, even under British occupation, have been left to the people who were there. In this area, first of all, Pakistan—against the resolutions of the United Nations—has annexed territories and incorporated them. What is more, such incorporation had taken place before the resolutions of the United Nations, and the United Nations Commission was not informed about these matters; they came to know about it later. Now, what happened in regard to this area known as Gilgit, which is strategically very important to India and for its defence, where in the British days there was a body called Gilgit Scouts under British Command? The territory was handed over to the Maharajah by the British when they left. Therefore, there is no question of this not being part of Kashmir. And the Maharajah sent there a Governor, and what was done was that these Scouts arrested the Governor under the Command of Major Brown. On 31 October the Gilgit Scouts led by Major Brown and other officers—presumably of the Pakistan Army—surrounded his house and he never suspected that these people were going to attack him. But there were rifle shots exchanged and one round was fired in the air to frighten them away. But what happened was that this man arrested him, put him in prison and handed over the territory. Major Brown made a declaration, or something of that kind, and it was through him that this particular territory went over to Pakistan.

The point here is this, that there has been not even a popular rising in this place. The custodians of this area were the Scouts under British Command. The British Government had no responsibility in this matter because after they handed over the territory the Scouts remained as an independent force. But the British personnel handed over this territory and the accession was received from them. Now in view of the time, I propose to make that story very short. It is now occupied; it has been incorporated, and there is a considerable army in that area.

The other area to which I want to refer is Chitral. Chitral is mentioned as one of the territories of Pakistan in the Pakistan Constitution. Therefore, it is an outstanding instance of annexation *de facto* and *de jure*. And the Commission has said time after time that there can be no change in the sovereignty.

It is sometimes argued that Chitral was not part of Kashmir. But there are the records of the British Government, most of which are in our possession, which show that this area was under the suzerainty of the Maharajah of Kashmir, and all those territories that were under suzerainty were part of the State. Irrespective of the value of Chitral to one side or the other, and whatever may be done in the far future if ever there was an agreement between the two sides; the annexation of this territory, the receiving of accession from a former feudatory to the Maharajah who had no right to do so, is a direct piece of annexation.

Then there is the other argument, the final argument, in regard to non-performance, that the whole of the position of Pakistan in regard to the conclusion of the truce, if one were to summarize it briefly and state it in one point, which probably would not be as accurate as it should be, is that they insist on what they call a military balance. That military balance has been rejected by the Commission. I wish to refer the Council to paragraph 2 of annex 12 of the third interim report which says:

> The Commission, however, cannot accept interpretation that 'the declared objective of the truce arrangements is to create a military balance between the forces on each side'. There can be no other objective of the truce arrangements than to establish peaceful and normal conditions throughout the State such as will be conducive to the organisation and holding a plebiscite. Similarly the process of synchronizing the withdrawal of the Pakistan and Indian forces to be arranged between the respective high commands and the Commission, in effect tends to create a

> corresponding situation on either side as withdrawal of one and reduction of the other. But in no way does this affect the ultimate aims of the resolution of 13 August...[1]

I will not read the other paragraph in view of the time, but I would like to refer to paragraphs 203, 204 and 225 in the same report which deals with the same problem; that is, that the Commission has at no time agreed to the idea of military parity or a military balance. If it agreed to a military balance, then it would mean placing these two sides in a position of equality. The position which the Commission held was that it was inconsistent with the sovereignty of Jammu and Kashmir, inconsistent with the reference of the Security Council and, what is more, a condition in which the security of the State could not be maintained.

I shall now deal with the position to which I made some references today in quoting to the Council the international practice in regard to the interpretation of treaties and what are the conditions that should govern. I am not going to repeat that, nor am I going to quote legal doctrine. But there is a well established legal doctrine, there are the main supporters of the United States of America and the United Kingdom, which say that the passage of time and the change of circumstances must affect the nature of agreements reached. That is a very commonsense proposition. It is not necessary to quote Latin phrases in support of it.

First of all, with regard to this time factor, the Commission, and India, and I presume, if I am not contradicted, Pakistan, expected the operation of part 3 of the agreements, that is the plebiscite, to be taken in reasonable time.

In that background, that the plan was accepted with all its reservations, is it reasonable to expect that it would stand still in regard to the territory of Kashmir, over which India has active control, in the social, economic or political respects, taking into account the conditions that obtain in India itself? Therefore, considerable changes have taken place—economic, social and communication developments, for example—and all these have brought about big changes in the state of affairs. What is more, the disturbance of the existing conditions is calculated to impoverish the people of Kashmir. When I refer to the conditions that prevailed there, under a later heading, it will be clear to the Security Council, if it is disposed to receive the facts and the arguments, that that is the position.

The other change factor I have already referred to, namely, the consolidation of the occupied territory. Time after time it has been said in this report that there should be only local authorities—meaning *de facto* local authorities. There should be no consolidation of territory. Western Kashmir is practically a Province of Pakistan, administered by its Central Government. It has no local government and, therefore, has become integrated in that way.

The same applies to other areas, directed by the Pakistan Army or the Pakistan Government. Therefore, this consolidation, the factual division of Kashmir that has been made by Pakistan occupation on the other side of the ceasefire line, is a change-condition which makes the operation of Part II very difficult.

We want to refer to other changed conditions of vital importance to our country. The Commission noted that there were forty-five battalions of Azad forces on the Azad-Kashmir side. That does not apply to the northern and extreme northwestern areas, but only to western Kashmir, where there is a population of 500,000, and it is there that there are these forty-five battalions today, according to our estimate. And these forces are officered by Pakistan officers and Pakistani-trained officers who go to Pakistan military schools, where there are a large number of commandos organized for guerrilla warfare. These commandos were organized and thrown back into the population. Their number may be only a few hundred—the last time I heard, there were only 800 of them, but that is not an absolute figure. However, they are being trained for guerrilla warfare. This is something affecting the whole conception of the opening of the territory for a plebiscite. It would be imprudent for any country not to take note of these conditions. The Commission says in paragraph 203:

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[1] Security Council Official Records, Fourth Year, Special Supplement No. 7, Annex 12, para. 2.

> The resolution of 13 August 1948 recorded one major change in the situation as contemplated by the Security Council during its deliberations in the early part of that year, namely, the presence of Pakistan troops in the State of Jammu and Kashmir. It did not, however, record a second element which has developed subsequently into a serious problem......

This, again, after the Security Council was seized of the situation and after the resolutions asking them not to make changes:

> in the implementation of that resolution: The Azad (Free) Kashmir movement, whose fighting forces today (Krishna Menon: that was in 1949) number some thirty-two well-equipped battalions. This movement, Muslim in character, has become the centre of strong and violent resistance to the accession of the State to India. It controls a considerable part of the western area of the State, claims to be fully organized as a government and its political activities appear to be directed toward the accession of the State to Pakistan. The Government of India, of course grants no recognition to the Azad organization and holds, officially at any rate, its existence to be a problem of internal public order. On the other hand the Government of Pakistan has rendered important assistance to the Azad movement; it has officered the Azad forces with officers of the Pakistan Army. Units of the Pakistan Army itself are present in Azad Kashmir and have operated in the closest cooperation with the local forces. However, Pakistan has not given formal recognition to the "Azad Kashmir Government". In a letter dated 6 September 1948 Pakistan informed the Commission that it could not make commitments on behalf of the Azad organization. The Commission has never negotiated with its representatives; having no international standing, the organisation can have no international responsibility.

The Commission states in paragraph 204:

> At the time that the Commission adopted the resolution of 13 August 1948 it had reason to believe that the Azad forces did not constitute a properly organised and equipped military force and that consequently their disposal, once the Pakistan Army had withdrawn from the State, would not constitute a major difficulty...

The Security Council must draw its own inferences as to why the Commission came to the conclusion at that time that it was not a serious factor because the Pakistanis did not inform it.

Paragraph 204 continues:

> In accepting the 13 August resolution, India apparently agreed that these forces could be dealt with after the truce became effective....

Does that sound unreasonable on our part?

> Four months later, during the conversations which immediately preceded the Commission's resolution of 5 January 1949, the Government of India stressed the importance it attached to the disbanding and disarming of those forces as a condition vital to the holding of a plebiscite. The Commission agreed that a large-scale reduction and disarming of the Azad forces should take place. Provision for this was made in the resolution of 5 January as follows:..

Then, the Government of India said, in a communication, that it was prepared to regard this as a matter of chronology. It did not ask that it should be done first, but that it should be done before the plebiscite was taken.

I am going to read another paragraph but I should like to omit all the others in view of the time. The Commission states in paragraph 225:

> There is, indeed no doubt that the Azad forces now have a strength which changes the military situation and to that extent makes the withdrawal of forces, particularly those of India, a far more difficult matter to arrange within a structure which considers only the regular forces of two armies. Although it might be a matter of discussion whether the numerical strength of the Azad Kashmir forces has actually increased since August 1948, there is no question that those forces, who have since then been working in close co-operation with the Pakistan regular Army and who have been trained and officered by that Army, have increased their fighting strength. It is reasonable to

suppose that, if the Commission had been able to foresee that the cease-fire period would be prolonged throughout the greater part of 1949 and that Pakistan would use that period to consolidate its position in the *Azad* territory, the Commission would have dealt with this question in part II of the resolution of 13 August.

Could there be anything more conclusive in favour of what I have been saying? Therefore, those are the changed conditions in regard to the army of that area.

I have already referred to the war of propaganda; therefore I do not propose to repeat it. Now comes the international position of the State of Pakistan. Here I want to preface my observation by saying that whatever I say does not constitute in any way a reflection upon the motives of the six other States represented around this table that are in military alliance with one party in this situation.

My Government has stated its position in regard to these matters. Wherever there has been opportunity of direct communication with Governments or of personal contacts, we have explained that we do not doubt their motives. We do not for a moment say that their purpose is to arm Pakistan against India. But the question is, what will happen to this considerable amount of equipment that now goes into this territory, whereby the entire military balance has been altered?

If the representative of the United Kingdom, whose country had the responsibility at the time of the partition, would go into the history of that period, he would find that one of the main problems discussed at the time of partition was the balance of military forces and equipment on either side in order to maintain stability. Now that equilibrium has been upset; and, therefore, this neighbouring country of ours, in dispute with us, always threatening war and crusades and keeping up a campaign of hatred, has now at its disposal very considerable quantities of equipment for use on the ground and in the air. When we come to the question of the military preparations, I shall read out such information as we have. Therefore, the equilibrium that obtained, at the time of the conclusion of the signing of this plan, which is called the Commission's resolution, no longer exists.

Whenever there is talk about the withdrawal of troops, which the Foreign Minister of Pakistan mentioned in his observations, all these factors have to be taken into consideration.

When India was partitioned, some seven or eight million people from either side went to the other country. It was an exodus which inflicted a great deal of hardship on the populations concerned. Fortunately for us, we have resettled practically all of them. With an idea of the problem of the refugees, the Council will be able to see that there is a steady stream coming from the other side, with which we have to deal, but any change in this situation, any stirring up of trouble here, any attempt to unsettle conditions today, would start a scare and an influx of refugees. The first thing that happens when there is an influx of refugees is the slaughter of populations of the community in the country concerned. It may happen in India, and I fear it will happen in Pakistan.

To sharpen the statement I have to make this morning, I might take the problem of refugees itself. The Pakistan Foreign Minister, in speaking to the Security Council, referred to the 500,000 refugees that have gone into Pakistan. I do not know whether those refugees referred to were people from Kashmir alone or whether this is a reference to the 1947 period, when they were trekking both ways. I have no doubt that 500,000 people went through Kashmir into Pakistan. More or less may have gone; it is immaterial.

However, what is of relevance to us is the position now and the treatment of the minorities. Our present figures—and we have a very considerable organization for dealing with this—show that the migration of Hindus from East Pakistan to India was 4 million. The migration of Hindus from West Pakistan to India was 4·7 million. The migration of Muslims from India to East Pakistan was 1·5 million. The migration of Muslims from India to West Pakistan was 6·1 million.

However, the important part today is the return of these people to India. The return, not of Hindus, but the return to India of Muslims who have migrated to East Pakistan is at the present moment 1 million. Therefore, what I said yesterday about our being a secular State stands vindicated. One million of the Muslim faith have come over from East Pakistan to us. About 100,000 have come over from the West to us.

In Kashmir itself, the Jammu and Kashmir Government have a very well organized refugee organization. Whilst the Foreign Minister says that 500,000 people went through Kashmir at that time, the present figures show that 450,000 Muslim refugees from Pakistan—occupied Kashmir have returned to Kashmir and they have been rehabilitated. We have figures of them because this rehabilitation costs money, and the figures show that 450,000 of them have been rehabilitated. Similarly, 122,429 non-Muslim refugees have come into Kashmir from Pakistan—occupied Kashmir. That is to say, taking the two between them, very nearly 600,000 people have come in as against 500,000 who went out. What is more, they are all rehabilitated.

Today our problem is the problem of people of either faith coming into India because of better economic conditions, because of the secular conditions, and so on. In case the Foreign Minister challenges me on that, I shall read a very short extract from a statement by his own Prime Minister of today. Mr. Suhrawardy questioned a member's statement during a discussion in the Pakistan National Assembly in October 1956 with regard to the treatment of peoples in their own country and why people of a non-Muslim faith should be loyal. This is what he said:

> You tell me today what signs have they (Krishna Menon: that is, the non-Muslims) shown of loyalty to Pakistan. My answer is clear. What have you done for them to get their loyalty? In what way have you shown them that you treat them in the same manner in which you have treated the Muslims? How many posts, offices, jobs, positions of honour and positions of responsibility have you given them?

That is the statement of the present Prime Minister of Pakistan. In East Pakistan there have been Government regulations in the way of official circulars asking firms not to employ people who are not of the Muslim faith and for the exclusion of non-Muslims from the cloth trade, which is held 80 per cent by them, and official instructions to all foreign oil companies for the exclusion of non-Muslims. There is an increase in the number of crimes against this particular section of the community, and the whole system of education is being placed on a religious and non-secular basis. What is worse, there is the wholesale cancellation of licences for firearms for the non-Muslim population, while there is a free distribution of them to the other side.

Those are the changed conditions that exist. In view of those changed conditions, how can the Security Council consider that the position that existed in 1949 exists today? If there were a possibility of the total withdrawal of all these forces and the restoration of law and order and peaceful conditions, that would be different. This is what has happened.

The repercussion of all these matters in India is very considerable. The instability that will be created in our part of the world is such that any attempt to inflict any hardship on the minorities in Pakistan is bound to have equal repercussions in spite of a very stern policy of our Government in regard to racial or religious offences. In spite of that, it will create trouble. When violence breaks out, it will break out in a very large way.

In dealing with changed conditions in the State, I must also refer to the economic and social position in the Indian-administered area.

In the first five-year plan, the State laid out £9 million; in the second five-year plan, £32 million. It has abolished what used to obtain in the old, feudal days, the compulsory levy of grain on the peasants. Debt conciliation boards have scaled down rural debts by 80 per cent. An area of over 50,000 acres has been brought into cultivation. About 3½ million pounds of fertilizer are distributed each year. One hundred thousand acres of land have been reclaimed during the last two years. Electric power has begun to go into the villages. Local installations of power plants and the purchase of bulk electricity from neighbouring India contribute a very considerable part of the light and power in the area. Four hundred and twenty-five miles of new roads have been built, and a large number of the old roads have been improved. New bridges have been built. The customs duties between India and Kashmir have been abolished. Factories have been opened for the manufacture of minerals, the tanning of leather, and so forth. An industrial revolution is taking place in the area.

The most important change, however, in so far as it affects the other factors which have been mentioned, relates to the visits of foreigners to Kashmir. During the days of the trouble, when actual hostilities were going on, we restricted, for security reasons, the entry of foreigners into Kashmir. In 1944, which was before the days of the trouble and a peak year for tourists, 27,000 people went to Kashmir in the tourist season: last year, 62,000 people went there, out of which 9,000 were non-Indians—that is, European and American tourists.

I turn now to the field of education. Over 500 new primary schools have been established, 126 middle schools, and seven colleges. Thanks to the operation of UNICEF, there has been an extensive campaign to improve health conditions, particularly as regards tuberculosis, which is one of the troubles in Kashmir.

In this connexion, I should like to read a few brief comments made by foreign observers. This is what a special correspondent of the Manchester Guardian—a United Kingdom newspaper—had to say:

> In Srinagar, rations have gone up from 18 to 24 ounces (Krishna Menon: of course, this may sound very small to representatives of Western countries) and the price has gone down by 10 per cent. The import duty on salt has gone, water rates have been lowered, Government servants' wages raised; and, to silence anti-bureaucratic feelings, peoples' tribunals to examine corruption and nepotism are being set up; ...co-education is to go and education is to be free for all.

A special representative of the *Sunday Times,* one of the organs of British conservative opinion, said the following—which I quote because the Foreign Minister of Pakistan made references to suppression in the Indian-administered area of the State:

> The Prime Minister (of Kashmir) moved unescorted among crowds who garlanded him, and peasants showered lumps of sugar, signifying a sweet welcome, on his car; while everywhere there were shouts of 'long live' and women sang 'our breadwinner has come'.

This is what the special correspondent of *The Times* of London had to say:

> More than Rs. 20 million of debts have already been reduced to Rs. 3,500,000... Irrigation is being extended, and improved seed and artificial fertilizer supplied at cost price...Electric power is being increased, and industries...improved and expanded.

Similar accounts were contained in *The Economist* of London, *The New York Times,* Swedish newspapers, Egyptian newspapers, and so forth. Statements to the same effect have been made by ordinary visitors to Kashmir.

I have now described the changed conditions on our side of the State—that is, the Indian-administered side. These changed conditions have a bearing on the Council's consideration of the present problem. The Council must view the resolution adopted in 1949 in the light of all the changed conditions and circumstances to which I have referred.

I turn now to conditions in the Pakistan-occupied part of Kashmir. In this connexion, I shall quote from our document No. 3, which, like the other documents to which I have referred and shall refer, I ask to be received as an official document of the United Nations.

First, I shall read excerpts from a memorandum to the members of the Pakistan Constituent Assembly from the All-Jammu and Kashmir Muslim Conference—that is, the large national organization of Azad Kashmir to which the Commission referred as wishing to accede to Pakistan:

> For the last few years the people of Azad Kashmir in general, and those of Poonch (the sword-arm of Pakistan and Azad Kashmir) in particular, have been subjected to great torture and terrorization. Account of this terrorism is very heartrending. The Azad Kashmir Government, acting on the advice of the Ministry of Kashmir Affairs, is primarily and mainly responsible for the conditions that prevail in Poonch today. (Krishna Menon: The memorandum then goes on to describe these conditions as follows):
>
> Martial law imposed in Poonch last time was without any justification... At least a dozen houses were blasted with dynamite, a number of poor families rendered homeless. Ruthless...and random firing by mortar guns took place, resulting in many deaths.....
>
> Arrests of men, women and in some cases of children were effected. About 400 persons are still under detention in the concentration camp at Pullandri.

These statements are interesting in the light of the reference which has been made to persons detained by the Kashmir Government in the Indian-administered area of Kashmir. I continue to read from our document No. 3:

> ...The people have been arrested without any warrants of arrest, on mere suspicion or personal vendetta...They are rotting in the concentration camps at Bagh, Bari, Pullandri and Sarsawah. They are forced to live under sub-human conditions...in Pullandri jail 340 persons are detained in two rooms which have been built to accommodate only thirty-six persons. Eighteen hundred gallons of water are required daily in this prison, but only 800 gallons are supplied.
>
> ...There is a concentration camp at Muzaffarabad also. The face of Ghazi Feroze Ali, Secretary of the Pullandri Muslim Conference, was blackened. He was dragged through the bazaar, garlanded with shoes (Krishna Menon: that is a form of insult in our part of the world) and the police spit upon him and hissed and hooted him for hours... The same treatment was meted out to Abdul Aziz Maloti.
>
> Women were arrested and subjected to unbecoming and insulting treatment—

and there follows a description of cases of molestation which I do not wish to read out.

The memorandum then refers to the collection of arms, and states that persons practising legal professions in that part of the world have been terrorized. I continue to quote from the document:

> Arrests and detentions without trial are a common feature of public life now....
>
> For the last six years people of Azad Kashmir have not been allowed to elect a government of their own. The refugees of Jammu and Kashmir half a million of whom are on this side of the cease-fire line, are living in sub-human conditions. Their rehabilitation has been entrusted to unpopular, callous and unsympathetic so-called leaders who serve the personal purposes of the officers of the Kashmir Affairs Ministry....
>
> To say that Azad Kashmir has been developed economically is to deceive the world and yourselves...

The submission is not meant for propaganda purposes. It was sent to the Pakistan Constituent Assembly by a political party seeking some redress. The following quotation from the memorandum is very important to the Council's consideration of this case:

> The Kashmir Affairs Ministry (Pakistan) are the acutal rulers of Azad Kashmir... People of Azad Kashmir are stunned to see what Pakistan means to them and those in Indian-held Kashmir have become hesitant in their blind love for the Crescent...

The memorandum then demands the recall of all Punjab constabulary from Azad Kashmir immediately and the recall of most of the non-Kashmiri officers, the appointment of courts of inquiry, and the establishment of a legislative assembly.

I repeat that this memorandum is not meant for purposes of agitation or propaganda. It was sent to members of the Pakistan Constituent Assembly by the All-Jammu and Kashmir Muslim Conference.

I should now like to read out some excerpts from an appeal made to the members of the Pakistan Constituent Assembly by important representatives of the people of Azad Kashmir. This appeal is also worthy of the Security Council's attention.

> For the last seven years the people of Azad Kashmir and the Jammu and Kashmir refugees have not been given a chance to elect their own government. Governments have been imposed upon them... The Ministry for Kashmir Affairs wields totalitarian control over the administration of Azad Kashmir.

The people who signed this appeal are all responsible persons in terms of Pakistan political life, according to their designations. They made this submission on the Azad Kashmir side. I have said nothing about the local conditions in the northern area, because it is very largely inaccessible, but the people live under very primitive conditions and the developments that have taken place in these areas are of a military character, to which I shall refer later.

In his statement, the Foreign Minister of Pakistan referred to conditions of repression and imprisonment in the heart of the Kashmir State which is not occupied by foreign forces. He read out a large number of names, and said that these people were in prison at the present time. I should like to say, because this will go out to India, that some of the persons he mentioned are not in prison now; they have been out of prison for a long time. He said that Prem Nath Bazaz, a Hindu, was in prison. He is not in prison. He was imprisoned for a year, and was released a long time ago. The people were detained on the orders of the Kashmir Government. It was stated that Mr. Ghulam Ahmad Ashai is now in prison, but he was released in 1954. Another person mentioned, Mr. Pir Maqbool Shah Gilani was released about a year ago. Mr. Abdul Ghani Goni was released on parole in the middle of last year, and finally some months ago. Mr. Ghulam Mohammad Dar was released towards the end of last year, and Mr. Sardar-uddin Mujahid was released on 10 September last year.

I am putting all these facts before the Security Council because an attempt has been made to show that there is a reign of terror in our part of this country. Last summer 62,000 people entered Kashmir as visitors, and 9,000 of them were non-Indians, they were foreigners. A great many of them were newspaper correspondents, cinema-men—because it is a great place for taking photographs—tourists and writers. They travelled all over the country, and that fact is sufficient indication that there is not an iron curtain.

Reference has been made to Sheikh Abdullah. I have already read from his statement to the Constituent Assembly to show what his political position is. Sheikh Abdullah was placed under detention by the Government of Kashmir. There is a detention law in Kashmir, just as there is a detention law in India. This is a piece of legislation which, in spite of our desires to maintain an abstract liberty, we found to be necessary in view of subversive movements in the country. Today, under this law, there are forty-nine people under detention in the whole of Kashmir, a good many of them for acts which have nothing to do with political crimes.

What is the procedure under this law? First of all, their offences must be stated to the detenus. A man cannot just be detained, he must be told why. They have access to a tribunal of high level, judicial persons who have to investigate the cases. Objection might be taken to this legislation, and there are some people in India who seriously object to it. The cases are examined by the judicial tribunal, which can order the release of a detenu, and the Government cannot refuse that release. They are not brought to public trial because there are reasons which may affect relations between States, not only with the State of Pakistan, but with other States. You have already heard, when I read from a document this morning, that my colleague from the United Kingdom quite rightly felt very concerned. I was more concerned, but I did not get any remedy for my concern, though he got his. That is how the world is, Mr. President. If some of these men were brought to trial, the Government could not withhold any evidence under our system, whoever that evidence might affect. It would create an enormous number of difficulties, but I do not want to ask the Council to go into all the details. I simply wish to say that, even taking quantum of it, there are forty-nine persons under detention, some for short periods, some for longer.

It is quite true that the former Prime Minister of Kashmir is under detention, but may I say, without any offence whatever, that the present Prime Minister of Pakistan was arrested in 1948. It is one of those things that happen in times of social changes. My Prime Minister was under detention for a long time, and he has said that he learned a great deal during that period. The present Prime Minister of Pakistan was a prisoner of the former Pakistan Government, but I must say that he has not retaliated in the same way.

With regard to Sheikh Abdullah, in a document which I am now going to put in there are at least five or six extracts from testimonials to Sheikh Abdullah given in previous times by Pakistan publicists and ministers, and there is no name that was too bad for Abdullah at that time. The question is, at which time did he turn quisling.

The letter of the former Prime Minister, Sheikh Abdullah, has been put in as a document by Mr. Khan Noon, and I am sure that he will agree with me that the only way to understand correspondence is to put in both the letter and the reply. Therefore, I have assisted him by providing technical assistance in putting in the reply of Mr. Sadiq, the President of the Kashmir Constituent Assembly. The letter of Sheikh Abdullah, which was put in as a criticism of the Government and against accession and so on, was sent to the President of the Constituent Assembly in order to make certain protests. The President of the Constituent Assembly was elected. He sent a reply, so if the Security Council looks into one letter it must look into the other. Therefore, in document 7 we have put the two together.

I have a great many more notes here about which I wished to talk, but I think you have heard me long enough. I shall only deal with the essential point that remains. I have no time to contradict every paragraph that appears in the statement of the Foreign Minister of Pakistan. There is, however, a misquotation from a Commission document which gives a totally erroneous impression of its meaning. I think that in saying that I am being moderate enough.

The present series of meetings are being held because of the letter dated 2 January from the Minister for Foreign Affairs of Pakistan to the President of the Security Council. In presenting his case, the Foreign Minister of Pakistan has done two things. First, he delivered what are threats. He indicated that trouble would brew. We have had an opportunity of comparing some of these statements with the statements made in 1947. They have, shall I say, a very close family resemblance, that is to say, if this is a beginning, especially if you read it parallel to the other statements I read out a while ago, that this does not end with the Security Council and they propose to do something themselves, and so on. Then Mr. Khan Noon said:

> Here I would like to say that it is sometimes argued by India that everything is peaceful (Krishna Menon: we have only said they are peaceful now on the Indian-administered side; on the contrary, we have said it is not on the other side) so why bother about Kashmir? But I warn you, (Krishna Menon: he warns the Security Council) that is a calm before the storm[1].

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[1] (S/PV. 761. p. 34-36)

Now I ask you gentlemen whether this is the language of the Charter: "But I warn you, that is a calm before the storm. Everything is not peaceful." Mr. Khan Noon continued:

> We have just seen a telegram which states that on 11 January our Minister for Information Mr. Amir Azam Khan made a statement in Karachi that the Indians have massed their troops on our border. The excuse that Mr. Nehru gives is that he fears an attack from Pakistan, whereas we have not sent one soldier to our border. The fact that he is afraid of a war breaking out because of the Kashmir problem should assure the Security Council and the world that it is peaceful on the surface, but if the Security Council closes the door on a peaceful settlement we cannot say what will happen. If the Indian troops are there because India fears war between India and Pakistan, that should be a sufficient answer to those people who say that all is quiet in the kingdom of Kashmir (Krishna Menon: It is not a kingdom any more) and India and Pakistan and the Security Council need not take any action.

Then he gives some advice to the Security Council:

> Please do not be misled by the fact that we are peaceful, that we want a peaceful solution.

The Security Council has had sufficient evidence adduced before it by me to show the nature of these intentions. Then he goes on to say:

> We are looking to the Security Council to do justice to these poor and poverty-stricken people (Krishna Menon: I have also read to you the conditions on either side) of Kashmir to whom it has promised a free and fair plebiscite under the auspices of the Security Council, which plebiscite has been denied to them for the last eight years.

That is a denial of fact because what has been promised is what is under Part III of the agreement.

I shall first deal with this statement. There is an allegation here which is of a serious character and I say with the highest respect to the Foreign Minister of Pakistan this should have been a subject of protest to my Government. That is the normal practice between two neighbouring Governments if either masses troops on its border. Now what is the position? In actual fact we have reduced the military strength in Kashmir recently. I referred this to my own Prime Minister and this is the truth. There is no truth whatsoever in the statement made by the Pakistan Minister for Information on 11 January. Of course, the Minister for Information, as you know, in peacetime is the reincarnation of the Ministers of Propaganda in wartime.

The United Nations observer teams are located all along the cease-fire line in Jammu and Kashmir. If there had been any massing of troops in that area, as alleged by Pakistan, the matter would have been immediately dealt with by the chief military observer of the United Nations group. That is with regard to the cease-fire line.

If the complaint is that we are massing troops on the Indo-Pakistan border, along the Indo-Pakistan border in the Punjab—that is in the western area—there has been no increase in the strength of our troops. The Prime Minister at the moment is Minister of Defence as well as Prime Minister, so he ought to know. If at all, the strength of troops deployed on the border has decreased as the majority of border posts have been handed over by the army to the Punjab armed police as the local police, not of the State Government. I do not know why and where the information came from; it may be that some observation from the air miscarried. They probably mistook Pakistan troops for Indian troops; they look alike. That is quite possible, but I think the interesting part of it is that on this day, when we were supposed to be making all these great troop movements in preparation for war, the great majority of our generals were taking part in a polo tournament in Calcutta. That is not the way to wage war. Therefore, there is no substance whatsoever to it. This is part of the propaganda of the Minister of Information. The Foreign Minister has only relayed what his minister of propaganda put out.

As against that, we have to take the position that not merely are their troops in Kashmir—and all of you sitting around this table representing independent States realize that the security of a country is a vital concern—but all the Pakistan military concentrations of any importance are on our border. Abbottabad is sixteen miles from the Kashmir border. It is one of the main military concentrations. Rawalpindi, which is the General Headquarters, is thirty-one miles from the Kashmir border. Murree, where another concentration of the 12th Infantry Division of the Pakistan army is located, is fifteen miles from our border. Jhelum is four miles from our border. Kharian is thirteen miles from our border. Sialkot is six miles away, so that we are ringed around by Pakistan concentrations the whole time. In document 2, which has been distributed, there is a map which shows how this encirclement is carried out, so that when we talk about security we are just not producing an argument.

If you want any further details since the Foreign Minister has taken the liberty of making a public statement about the disposition of our troops which turns out to be inaccurate, I take the liberty of telling you how their troops are deployed in the Kashmir area. I did not ask the Pakistan Government where they got their information. I only pointed out that it was inaccurate. This happens to be accurate. Scouts in the northern area of Pakistan-occupied Kashmir —that is the Gilgit area—number 3,000. They are officered by Pakistan regular army officers. Formerly, there was a distinction between the A and B categories of the Azad battalions, but now it has almost disappeared, meaning thereby the militia has now become a regular army. All "Azad" Kashmir battalions and their training and equipment are on a par with Pakistan regular troops. Regular Pakistan army officers with Pakistan forces and scouts in Pakistan-occupied Kashmir are more than sixty. The Commanding Officer and Adjutants in most of "Azad" Kashmir battalions are from the Pakistan Regular Army. There is a sprinkling of regular Pakistan officers also in all "Azad" Kashmir battalions and in the Scouts Organisation.

As far as the deployment of troops is concerned—because it affects our security, as I gave the distances—there is one corps in the Rawalpindi area, one armoured division in the Rawalpindi area, the 12th Infantry Division under the operational control of the 15th Infantry Division, three infantry brigades in the Sialkot area, and this division is under its operational control. In other words it is these nerve centres that control the entire territory of Kashmir under Pakistan occupation. Kharian and Jhelum are being developed as big bases, only four miles from us and a new component for the armoured division to be used as a base for supplies of the new military equipment coming in under American aid.

Lashkars are being trained for military operations in the "Azad" Kashmir territory. Personnel are drawn from the "Azad" Kashmir battalions and are trained by Pakistan personnel.

This is another important part of it. Most of the airstrips and landing-grounds are being widened and improved to take the latest type of jet aircraft. We have the length of these airstrips and the increases that have been made recently and we are quite satisfied that the increase in the length of these runways is for the purpose of taking the jet planes which they could not have taken before.

The 12th and 15th Infantry Divisions have been under the operational control of that part of Kashmir. Formerly this was the responsibility of the 12th Infantry Division. The ex-armed forces personnel are being organized by ex-Major-General Akbar Khan and others, to raise a volunteer corps to liberate Kashmir. This is the same Akbar Khan who was not supposed to be in Kashmir but appeared under the name of General Tariq and who was prosecuted by the Pakistan Government for conspiracy against the Pakistan Government and now, I suppose, a new patriotic phase has emerged and he is going to liberate Kashmir. So the former insurrection leader has also been put into this thing. I would like the Security Council to take note of this position.

In regard to air bases in Northern Kashmir, Gilgit and Chitral are the two important airfields; they are on the Soviet-Chinese-Indian border and, according to the reports that we have, are being expanded and developed. Of course, that equipment cannot be manufactured in Pakistan. Heavy machinery and radar are reported to have arrived there. The *Azad*-Kashmir forces have no air arm of their own. Before November 1948 there were only two cross runways in the Gilgit airfields; one was 915 yards and the other 650 yards. They were for the small observation planes of the British days to come down on. But now the runways have been increased to 2,000 and 2,500 yards. I do not think I will read out the remainder because it is highly confidential information.

I have said, and I would like the delegations of the countries which are in military alliance with Pakistan—and particularly the United States—to accept my assurance, that in any observations I make, no reflection that such assistance as they give is intended to be used against us. But unfortunately weapons of war have no magazine for intentions; their only magazines are for projectile power. You cannot decide beforehand which way they will fire.

I will not quote statements from the newspapers or from legislators or agitators, it is too serious a matter for that. But I will quote the present Prime Minister. The Prime Minister, speaking at Lahore on 2 December 1956, not long ago, defended Pakistan's policy of military alliances. He said that when the Government of Pakistan decided to remain neutral and weak there was no immediate danger to its own independence—it is quite obvious it was not its own security:

"I see no country that is prepared to attack, engulf or destroy us." That includes us, because Mr. Suhrawardy was formerly a member of our National Party. "I see no country that is prepared to attack, engulf or destroy us". I hope he still lives with that statement. The immediate disadvantage to Pakistan, however, is that it will not be able to assert its rights. The Prime Minister continues: "We may have to keep our rights on Kashmir, on canal waters or to bow our heads to a superior and more powerful neighbour".

Then he went on to refer to India's attitude towards Pakistan. It is not a defensive affair, and these alliances therefore are intended to negotiate from strength, as it is called, whatever that means.

The Foreign Minister said in Rawalpindi on 21 October: "There is only one country in the world inimical to Pakistan and that is Bharat"—that means us, as they do not like us, but this word occurs in our Constitution and we have no objection to it, we are not ashamed—"on account of its intransigent policy in Kashmir." There is only one country inimical to Pakistan, but they have signed a trade agreement and we are always common sufferers under certain conditions.

Sir Firoz Khan Noon said at Lahore the previous day, speaking in justification of Pakistan's adherence to military alliances and specially the Baghdad and SEATO Pacts, defended it on the grounds that "a powerful neighbour country which was inimical to Pakistan had in fact forced it to seek friendship elsewhere. That country had grave differences with this country and the two pacts have enabled Pakistan to ensure its defence against aggression. The country's freedom could only be preserved with the help of those friends."

These are the two most restrained statements on this subject. I could quote a great many more, but it is not my purpose to aggravate this matter because so many other countries are involved; in spite of all the reservations I have made, it would be bound to leave a feeling that we were extending this debate to other matters such as the general world policies of certain countries.

At this moment it is necessary for me in a few minutes to say what our position is.

पं० इन्द्र विद्या वाचस्पति प्रदत्त संग्रह

There are certain proposals made by the Pakistan Government. I had intended to deal with them this morning but it is not necessary for me to deal with them now because of the resolution which is before us; no doubt they will be discussed at that time. But if I deal with these proposals briefly it should not be considered that we have exhausted our observations in this subject. The proposals are as follows:

> In view of this grave situation the Government of Pakistan request the Security Council to take action on the following lines:
>
> (1) Call upon India to refrain from accepting the change envisaged by the new constitution adopted by the so-called Constituent Assembly of Srinagar.

I explained yesterday that this Constituent Assembly does not proceed from the resolutions of the Jammu Conference or anything like that; it has its origin in the proclamation of the Head of the State, the text of which I read out to you, and its purpose is the creation of a constitution for Kashmir itself. The relation of Kashmir to India, so far as we are concerned, is decided by the accession. Therefore, it is not the Constituent Assembly that should be attacked and I do not see what restraint can be imposed upon the exercise of the sovereign rights of an independent country. How can the Security Council turn round to us and say that a constituent party to a federation cannot have its own constitution, to order its own life in its own way? If anything is to be attacked it must be the accession, as I pointed out yesterday and I submitted that the Security Council is in no position under the Charter to go into the legality of the accession; and so far as we are concerned it is complete.

The second paragraph of the proposals reads:

> (2) Under Article 37(2) of the United Nations Charter, spell out the obligations of the parties, under the terms of the international agreement for a plebiscite as embodied in the United Nations Resolutions.

I think it would be repetition several times over for me to point out the fallacy in the last three lines. There is no international agreement for a plebiscite; there is international agreement on a plan for which there are certain pre-conditions. In these matters we must not jump from one thing to another; it does not mean the same thing. We are always willing to have the obligation of this body under the Charter spelled out.

Then there are remedies proposed. I do not think I shall deal with these in detail, but so far as the remedies in paragraph 77 are concerned, before those who are applying their minds to it make their final decision I would request them, particularly those who regard themselves as in close relations with us, to refer to the Commission's report on this subject made nine years ago.

It is a bad policy to subscribe oneself to courses of action for reasons that are not related to this subject. So far as paragraph 77 is concerned, we reserve our comments, except to refer to the paragraph in the Commission's report in regard to the introduction of other troops and forces in the area, and the answers that have been given. This was a Pakistan request, made by Sir Mohammed Zafrullah Khan nine years ago; it was reviewed and the Commission turned it down. I want to submit also, for those who are very constitutionally minded, that this is a contravention of the Charter.

I would like to say that the substance of my submission before the Council is that the Government of India asked the Council to carry out the provisions of the Charter, which is what it will do. We, on the other hand—and I make a solemn declaration on the part of the Government of India—shall not use force. We shall not do a single thing that will upset stability. We have no desire —and we have never done it in the past—to change the *status quo* in regard to any of our difficulties on our frontiers by the use of force. The most outstanding instance is the Portuguese colony of Goa on our western side. It is Indian territory under imperial occupation. We had a moral duty as a national movement to bring about their affiliation. There are our friends from the Fourth Republic of France who had possessions of this kind in India. We patiently negotiated with them, as they did with us for over seven years; while if it were a question of force, it could have been decided one way or another before. Therefore we do not change the state of affairs by the use of force.

I have been asked by the Government of India to state, therefore, that not a gun, not a soldier, not a shot, will be fired by us. There will be no aggressive action taken so far as we are concerned. It is a little late in the day for Mr. Khan Noon to come and tell us about a no-war declaration—which sounds very well except when you read the conditions. It was a request that was made to his predecessor when he was Prime Minister and Foreign Minister eight or nine years ago, and repeated time after time to his successors, including the Ambassador to Washington at the present time. Therefore, while it may have the same label, it has not got the same substance.

I am to assure you that so far as we are concerned, even in order to redress our wrongs, even in order to restore our territories, to assert the sovereignty which this Council has at no time challenged and, what is more, repeated time after time, and in order to pursue the purposes embodied in our Constitution, and to establish the integrity of our land, we are not prepared to use force. But at the same time, in view of the threats that have been made, if our territory is violated, then we shall use the provisions of the Charter to defend what is ours under the law and in terms of our possession. And this is merely a very humble statement of the position of the Government of India.

It has no relation whatsoever with our armed dispositions. I have with the utmost frankness told the Council what our armed disposition is. Ours is perhaps the only country in the world which has reduced its military budgets. We spent somewhere about 18 per cent of our total revenues on military expenditures, as against 37 per cent of Pakistan's. Our army has gone down in numbers and in its offensive power, while the other army has gone up. But believing as we do that it is not possible to equate this position, especially in the context of these military alliances, by entering into an arms race, and that probably the risks of peace are no greater than the risks of war, we are taking this line.

The Security Council composed as it is, in the circumstances in which we find ourselves of not having considered this question for five years, and, I hope in view of the submissions I have made has a serious responsibility to pronounce on this question. I say that the fundamental question is whether the Security Council is prepared to say to itself, whether each Member State which the Members represent is prepared to say to itself, that from an aggression, whatever may be the rights of the other side, other consequences beneficial to the aggressor can follow?

That is the issue we are considering in another context and in other places. Therefore, to disregard all that has been said by the Commission—and not in one paragraph, but in many—and, what is more, as I said this morning, to draft resolutions on this subject before another side has submitted its case, is not to proclaim the sense of justice and equity of this august Organisation.

Therefore, my Government, in full faith, in the allegiance of the Security Council to the principles of the Charter, believing in our rights in law, in morality and in ethics, and what is more, knowing what are the interests of the peoples of India and Pakistan, knowing the consequences of unsettlement, remembering the grim tragedy of 1947, knowing the passions that are aroused when there is a quarrel between neighbours, asks you to be careful. We ask for your prudence; we ask for your sound judgement in not jumping into a situation without taking all these facts into consideration.

The Government of India here is not in the dock. We came here as complainants.

A distinguished colleague of ours appears to have mentioned this today: why should we be so much on the defence? If it sounds to people that we are on the defence, it may be because we indulged in some understatements both in the past and in the present. We are here not in order to ask for condemnation of anybody, but we are here in order to state what are our rights under the Charter. Have we the right for the security of our territory? Have we the right to be free from threat? Have we the right to feel assured that the machinery of the Security Council, and its resolutions, are not going to be used as a smokescreen for the preparation of aggression against us? Have we the right so far as the Council is concerned —and I say that it cannot impose it—to live side by side with our neighbour, free from the threats of a holy war? Have we the right to enable our peoples, the great majority of whom are under subsistence levels, to devote our energies, our attention, our resources, our friendships, for the economic and political development of our peoples?

These are the questions that face us. And while I have no desire to conclude in this way, I cannot but help referring—and I would not have done this if it had come from any other representative of the Government of Pakistan except our old friend Mr. Khan Noon—to what he told this Council when he said that between the friendship of the Indian and Pakistan people stands Mr. Nehru. I ask the Council to consider that statement, coming from a leading Indian personality only ten years ago, who is a family friend of most of what may be called the ruling families, if you like, the persons in Government positions in India, who knows our intentions and who represented the Government of India as a whole in many circumstances, and telling our people that between the two of us lies the personality of our Prime Minister.

If that is not incitement to revolt against the Government, I ask what is? It is the only part of that statement that has caused our delegation intense pain. That comes on top of the kind of thing that is written in Pakistan. What I have here is from the *Dawn*. I am ashamed to read it, but it is my duty to do so. The *Dawn* is a paper founded by the founder of Pakistan. It is still regarded as a kind of most important organ, I believe. It says:

> The Security Council will have barely ten days to decide upon some concrete, tangible, unequivocal and compelling step whereby that rapacious brigand of Asia, that hypocrite masquerading as an apostle of peace with his hands red with the blood of Kashmiris as well as Bharati Muslims, that double-facing, double-talking and double-dealing Brahmin Janus who shamelessly wooes both Moscow and Washington in order to have the best of both the worlds—can be prevented from accomplishing his designs.
>
> Will the United Nations this time act, or will it again temporize and shirk its responsibility?

This is about the Prime Minister of India who, when he went to Pakistan—and I make no odious comparisons—was received with greater affection than any Pakistan leader. It goes on to say:

> Let us hope for the best, but be also prepared for the worst. The one thing certain is that Bharat shall not be allowed to grab Kashmir finally (Krishna Menon: so there is no question of the plebiscite deciding). If the United Nations fails, and those with whom we have thrown in our lot prove faithless, (Krishna Menon: those are the six military allies) let the world take note that the prospect of a peaceful settlement will vanish for ever. The inevitable alternative need not be spelled out—but come it will.

I do not say it is a statement of the Pakistan Government. But considering that while the Security Council is sitting here demonstrations against our missions are taking place in Pakistan territory, and what is more, that those demonstrations are addressed and spoken to in cordial terms by the Prime Minister of Pakistan, I hope the Security Council will pardon me if I make references to this. Even where there are hostilities, even when there are great strained relations, there are proprieties to be observed. We have also a very sentimental population, not different from theirs. We have a larger country; we have pockets of Muslims all over. I come from a part of India where a considerable Muslim population forms a pocket. We do not want the conditions to be created where they will be the victims of fanaticism and of passion. Therefore, no errors have been made in this.

The Security Council regards this as a dispute. It is not a dispute for territory. There is only one problem before you—whether you will face it or not, and if you do not face it, I say with great respect it is a matter between yourselves and the instructed judgment of your Governments—and that problem is the problem of aggression. My Government, when once that is resolved and when all these elements of aggression are withdrawn, will not be wanting, in its allegiance to the Charter, in finding an arrangement by adjustment with our neighbours which will be to our common good. Any other procedures you may adopt will not only put off that day, but will aggravate the relations which we are trying very hard to be otherwise. But it will also prove to those vast millions of the Indian people—and irrespective of all circumstances, they have many friends in this world, in all continents—to the masses of them, that the politics of power alignments, religious fanaticism, personal antagonisms, take precedence over the fundamental principle of the Charter.

The Charter enjoins upon you, Mr. President, and your colleagues an action consistent with the crime of invasion.

IV

Khan Noon (Pakistan).—The statement of the representative of India is highly tendentious, full of inaccuracies, and altogether misleading. I will, with the permission of the Council, try to answer all these points that he has raised at a subsequent stage of the debate on this dispute. We are at present concerned with the urgent consideration of an interim measure on which we have requested action by a particular date. As soon as the Council is pleased to take a decision on this measure and debate on the dispute is resumed, I shall seek the permission of the President to make my submission.

Sir Pierson Dixon (United Kingdom).—It is a matter of very deep regret to my Government that the Security Council should have to be dealing once more with the Kashmir dispute. There is the closest relationship between my country and all the peoples of the sub-continent—if I may use a term which, I agree with the representative of India, is not a very elegant one. Ties of history, of sentiment and, as we firmly believe, of interest also, link our small island kingdom with every part of that vast section of Asia.

We are proud of our part in the constitutional development of the Commonwealth. We like to think that, in a period which is past, we contributed not a little of our own to the inheritance of the age-long civilizations of that part of the world. There is much that we have learnt in return.

In the past, as the present, our constitutional relations with the various parts of this area have differed, but our good will to every part of it remains the same.

I should like to take this opportunity of expressing my gratification at the generous remarks that have been made in the course of this debate about the attitude of my Government and of the role played by many of my countrymen during the difficult and anxious period of travail that gave birth to the India and Pakistan of today. Only the voice of India would, I think, deny that the Englishmen, the Scots, the Welsh and the Irish—for, on a small scale, we too have our diversity—all those who served the Crown in the old imperial India and in the transitional period came to feel a deep devotion to the people among whom they passed their lives and gave of their best.

In the altered circumstances of today those feelings persist. From the bottom of our hearts we wish well to the peoples of India and Pakistan. They are partners with us, and with many others, in a community which rises above differences of race or creed and which is, I think, unique not only in the present world, but in world history. Everything that unites these two countries gives us deep satisfaction; anything that divides them causes us deep concern.

Unhappily, today the Security Council is dealing with a problem that does deeply divide these two countries. That the difference is a deep one and that it has caused the strongest emotional reactions on both sides, it would be useless to deny. It is, therefore, the desire of my Government, as it is certainly the duty of the Security Council, to proceed in this matter with the greatest prudence and foresight. Under the United Nations Charter the Security Council is charged with primary responsibility for the maintenance of peace and security on behalf of the Members of the United Nations as a whole. I am sure that the Council will do its best to act in the spirit of the great responsibilities which it bears.

I shall have more to say at a later stage of the proceedings about many of the matters of substance touched upon in the statements of the Foreign Minister of Pakistan and the representative of India. At this stage, however, I propose to limit myself to the subject matter covered by the draft resolution which my delegation has joined in sponsoring. This particular matter has, of course, been considered by the Council before.

The Constituent Assembly was established in Srinagar in 1951. As Mr. Krishna Menon pointed out yesterday, its primary task was to promote the processes of self-Government in Kashmir territory. That is not a matter which in itself comes within the jurisdiction of the Security Council, and my Government, for one, of course, welcomes any step towards the development of democratic processes in Kashmir as elsewhere; but when its attention was called to the matter in 1951, the Security Council could not fail to take note of the reports that one of the functions of this Constituent Assembly would be a decision on the future shape and affiliation of Kashmir.

The Council was naturally concerned that nothing done in Kashmir should prejudice a settlement of the whole issue in accordance with the principle that had been the basis of its consideration of the matter since 1948, that is to say, that the final disposition of the State of Jammu and Kashmir should be made in accordance with the wish of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

What action did the Council then take? It did not seek to interfere with the processes of democratic development in Kashmir, but it affirmed a quite simple proposition that the convening of the Constituent Assembly and any action that it might take would not constitute a disposition of the State in accordance with the principle to which I have just referred.

The Council was assisted in its task at that time by the explicit assurances at various stages of the proceedings by the representatives of the Government of India. In particular, on 9 March of that year, Sir Benegal Rau had this to say:

> Will that assembly decide the question of accession? My government's view is that, while the Constituent Assembly may, if it so desires, express an opinion on this question, it can take no decision on it.[1]

Then, after the resolutions had been passed, Mr. Dayal on 29 May reiterated this assurance and said something else, which I should also like to quote:

> I reaffirm that so far as the Government of India is concerned, the Constituent Assembly for Kashmir is not intended to prejudice the issue before the Security Council or to come in its way.[2]

The position thus was quite clear, and I now turn very briefly to what has happened since. If I understood Mr. Menon correctly when he spoke yesterday, he said that the Constituent Assembly for Kashmir had passed a constitution, some of the clauses of which came into effect automatically on 17 November 1956, and others will come into effect on 26 January next. In particular, Mr. Menon referred to article 3 of the constitution as already being in effect, and that article, I believe, states that the "State of Jammu and Kashmir is and shall be an integral part of the Union of India."

In these circumstances it is surely quite natural that the Government of Pakistan should seek some reassurance as to the views of the Security Council.

If I understood Mr. Menon correctly yesterday, he said that the constitution for Kashmir which we are considering is that of "a sub-sovereign body". This is, I take it, another way of making the point made by Sir Benegal Rau in 1951 when he told the Security Council that as regards the question of accession the Constituent Assembly can take no decision on the matter.

This, then, appears to be the position today, as it was in 1951. The Security Council, in dealing with this limited question, has before it, therefore the same considerations as it had in 1951. In these circumstances there appears to be no reason at all to modify the simple proposition set out in certain parts of the Security Council resolution of 30 March 1951 to which I have previously referred.

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[1] Security Council, Official Records, 536th Meeting, para.23.

[2] *Ibid.*, 48th Meeting, para. 40

In view of the expressed anxiety of the Pakistan representative on this score, it seems to me reasonable for the Security Council to consider a short draft resolution which reaffirms the clear stand it took in 1951. It is for that reason that the United Kingdom joined in sponsoring the draft resolution before the Council.

My colleague from India complained this morning that the draft resolution had been circulated before he had completed his speech. Perhaps I should say, as one of the sponsors, that I had taken the statement we listened to yesterday afternoon as a clear exposition of the Indian position on the particular aspect of the Kashmir problem with which the draft resolution deals, that is, the point relating to this constitutional issue. There is, of course, a special reason for expedition in connexion with this particular point, since the other party to the dispute, the Government of Pakistan, has expressed concern lest some step might be taken in the very near future, that is, on 26 January. For the practical purposes of our discussions here in New York, this date may in fact partially be considered as 25 January, since New York is eleven to twelve hours behind Delhi and Karachi in time. It is evident; therefore, that time is very short if some reassurance is to be given.

There are, of course, other matters of the greatest importance referred to in the speeches of the representatives of Pakistan and India. These matters are before the Security Council, and they are matters which require full and most careful consideration. It is for this reason that it seems wise to include the second operative paragraph in the draft resolution, and I would wish to return to these questions at that later stage.

Walker (Australia)—It is not my intention today to enter at any length at all into the substance of the difficult and longstanding problem of Kashmir, but I thought I should say a few words immediately regarding the draft resolution which, together with several other representatives here, we are submitting to the Council. We think that it is necessary to present this draft resolution now and to comment briefly on it just because of the march of the calendar and the references which have been made to the date of 26 January, which, together with India, we share as a national festival.

I should like to say that, so far as I am concerned, I took the representative of India's remarks yesterday as being a full statement on the particular matter to which this draft resolution is addressed, and for that reason I was prepared to join in sponsoring the draft resolution this morning.

The Kashmir problem is one that has occupied the attention of the Security Council for a number of years, and I think it will be recognized that if a solution satisfactory to both India and Pakisan has not been put into effect, it is not through any lack of effort on the part of the Council or through any failure by the members of the Council to study the complexities of the problem in a spirit of good-will towards both parties. Indeed, the Council has, in its past resolutions, laid down certain basic steps that should be taken towards a solution, steps which were firmly founded upon the principles of the Charter.

The first step was to establish and police a cease-fire, which happily is still in force. In an attempt to move ahead towards a constructive solution, the Council has declared the rights of the people of Kashmir to determine their own political future and has placed faith in the recognized democratic method of a plebiscite, to be conducted in conditions that would ensure a free vote without any coercion. However, the Council's efforts, through its Commission and its successive Representatives, to bring this about have not yet been successful, and we are again requested, this time by Pakistan, to take up the matter.

The Australian delegation enters upon this discussion with a deep sense of responsibility, for the people of Australia have followed this problem of Kashmir with great anxiety and concern. One of the most remarkable results of the United Kingdom's policy in terminating imperial rule in India was that it paved the way for a new relationship between Australia, on the one hand, and India and Pakistan, on the other. The growing sense of our partnership with India and Pakistan in the Commonwealth has been a prominent factor in the minds of Australians in recent years, and today the Australian people are widely conscious of their close ties with India and Pakistan, ties that have been strengthened by personal contact, especially with the many young men and women who have come to study in our universities and colleges.

This conflict over Kashmir has grieved us, and, as is usual when one's close friends quarrel, we have not been eager to take sides. But we have endeavoured to understand sympathetically the issues at stake and to encourage an amicable settlement. The efforts of the Australian Prime Minister, Mr. Menzies, in this direction are well known, as is the work of Sir Owen Dixon, the United Nations Representative in 1950, and of General Nimmo, the present United Nations Chief of Staff in Kashmir.

We Australians believe most sincerely that the continuing existence of this conflict can only bring with it evil effects for peace in the sub-continent, for the evolution of democratic government in the two countries, and for the economic development of Kashmir and the welfare of its people. The sole interest of the Australian Government in this matter is to do what we can, in the circumstances prevailing, to assist the parties to find a just and mutually acceptable solution of this problem.

We have listened most carefully to the statement made before the Council last week by the Foreign Minister of Pakistan, Mr. Khan Noon, and to the detailed reply we heard yesterday and today from the representative of India, Mr. Krishna Menon. Both statements are extremely important and require the most painstaking consideration in the Council, and I can assure Mr. Noon and Mr. Menon that their observations and arguments will receive close and serious examination by my delegation and by the Australian Government.

Those statements exposed very clearly the complexity of the problems that had to be faced by the United Kingdom and by the political leaders of India and Pakistan in connexion with the transfer of sovereignty, the establishment of practicable systems of government, and the settlement of the delicate issues relating to the former Princely States. That there are limits to human wisdom and the capacity to solve such problems is unfortunately all too true, and is tragically illustrated by the situation in Kashmir. Nevertheless, one cannot but note that the achievements of both India and Pakistan in building their State are in part a reflection of the great measure of wisdom displayed by those who had to resolve the difficult constitutional and related problems that have been explained to us in these statements.

I am not at all convinced that it would be desirable for the Council to take up in detail many of the particular questions of past history that have been ventilated by the representatives of Pakistan and India. The charges and counter-charges of conspiracy and aggression have been considered at great length by the Council in the past. It seems to me most important at the present stage to concentrate our attention upon the fundamental principles already recognized by the Council.

There is no doubt in my mind that whatever varying interpretations may have been placed by India or Pakistan at various times on the conditions to be fulfilled before a plebiscite should be undertaken, and whatever the course of action of these parties at various stages of the dispute, the Security Council has committed itself to the principle that the wishes of the Kashmiri people regarding their future should be established through a plebiscite under the auspices of the United Nations. As I see it, this is the view of the Security Council, as expressed in several resolutions, and it is my impression that the Council has in the past considered India and Pakistan as having accepted this principle.

Perhaps I should say in passing that Mr. Menon's statement, interesting and powerfully argued though it was, still leaves me in some doubt as to just where the Indian Government stands today in relation to this principle, and it may be necessary for us to go into this question at a later stage. But it has no bearing on the fact that the Council has been, and is at this moment, committed to the principle of a plebiscite.

The Security Council also considered it necessary almost five years ago to record its view that any action taken in a Constituent Assembly in Kashmir to determine the political future of the people of Kashmir would not constitute a disposition of the State in accordance with this principle.

What view is to be taken, therefore, by the Security Council as to the significance of the deliberations of the Kashmir Constituent Assembly? I confess that it is not altogether clear to me just what is expected to happen in Kashmir from a constitutional viewpoint on 26 January. I understand that the Constituent Assembly has adopted a Constitution for Kashmir, some of whose provisions were operative from 17 November 1956, and the remainder were to come into effect on 26 January. What is not completely clear is to what extent this represents any new step purporting to determine the future affiliations of the State of Kashmir and whether it is regarded by the Government of India as raising a new barrier in the way of a plebiscite in accordance with the Security Council's past resolutions.

I do not know whether the Government of India itself proposes to take any formal step to accept such changes as are purported to be made through this Constitution drawn up by the Constituent Assembly. It would seem to us that any such formal action would be in conflict with the past resolutions of the Council.

If, on the other hand, the Constituent Assembly is merely going to dissolve itself on 26 January and celebrate the completion of its activities, the question remains as to whether those activties are regarded by the Government of India as having any bearing on the disposition of Kashmir and the question of taking a future plebiscite. If so, they would seem to us to be equally inimical to the Council's past resolutions on this subject.

In these circumstances, it does seem desirable to us that the Council, before going any further with its examination of this difficult and important problem, should draw the attention of all concerned to the Council's earlier decisions. For this reason, the Australian delegation has joined in sponsoring the draft resolution which is before us, and it expresses the hope that the Council will adopt it without undue delay.

Nunez-Portuondo (Cuba) (interpretation from Spanish): The delegation of Cuba would like to pay a tribute to the great oratorical efforts which have been displayed by the Foreign Minister of Pakistan and the Ambassador of India. Their statements will be extremely useful to the members of the Council when they take up in detail the substance of this question.

However, at the moment we are faced with what we might call a preventive measure, namely, the provisional measure which is set out in our draft resolution. In passing I should like to say that the delegation of Cuba would have preferred this draft resolution to be presented after the representative of India had concluded his statement to the Council. In any event, my delegation does not believe that the delegation of India can have any reason to oppose this draft resolution. After all, its first paragraph contains the views already expressed by the Prime Minister of India, Mr. Nehru, for whom I have the highest admiration and respect, to the Prime Minister of Pakistan. In a telegram dated 8 November 1947 to the Prime Minister of Pakistan, the Prime Minister of India declared:

> It will thus be seen that our proposals which we have repeatedly stated are (1) that Government of Pakistan should publicly undertake to do their utmost to compel the raiders to withdraw from Kashmir; (2) that Government of India should repeat their declaration that they will withdraw their troops from Kashmir soil as soon as raiders have withdrawn and law and order are restored; (3) that Governments of India and Pakistan should make a joint request to United Nations to undertake a plebiscite in Kashmir at the earliest possible date.

This statement by the Prime Minister of India, which does him great honour and which is in complete conformity with the principles of the Charter and the principle of the self-determination of peoples, is what we have reproduced in the first part of our draft resolution, namely "that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations".

Consequently, nothing new is introduced in our draft resolution. We merely reaffirm previous agreements or decisions of the Council, and set out what was accepted previously by the representatives of Pakistan and India.

I do not see any obstacles in connexion with the second part of the draft resolution that might prevent the delegation of India from giving its agreement. The representative of India has repeatedly stated that the decisions of the Constituent Assembly with regard to Kashmir cannot affect these latest agreements and that these agreements cannot affect the final disposition of Kashmir. He stated that he understands that Kashmir forms a part of India by virtue of acts undertaken previous to the Constitution. Consequently, if he fully accepts that to be the situation in respect of Kashmir, a view which is not shared by many members of the Council, then the second part of our draft resolution does not affect that situation.

The delegation of Cuba, therefore, believes that the draft resolution is a reaffirmation of the position of the Security Council and of very clear principles of the Charter. We hold in high esteem the principle of the self-determination of peoples. At a later debate we shall see when and in what manner the plebiscite can be held.

Here, however, I agree with the representative of India that this plebiscite can be held only when certain previous conditions have been fulfilled so that the people shall be assured of being able really to express its will on whether it wishes to join India or Pakistan. Therefore, as a provisional measure, I feel that our draft resolution can quite safely be accepted by both India and Pakistan. It is for that reason that the delegation of Cuba has co-sponsored the draft resolution and will vote for it.

With regard to the substance of the problem before the Council my delegation would, naturally, require further time to study all the different documents and the statements made by the representatives of India and Pakistan. Those statements are very lengthy. They contain many quotations from different documents and different authors, and they cite rules of international law, and so on, which we feel have to be carefully weighed and analysed before we reach a final decision. When the matter does come up for discussion in substance the Cuban delegation will then make its views known.

Lodge (United States of America): In considering the India—Pakistan item the Security Council faces an unfortunate difference of opinion between two nations, whose friendship and esteem is highly valued by the United States. We desire to help them to find a solution to this problem and we approach the question in that spirit. It is regrettable that this dispute has lasted more than nine years, despite the earnest efforts of the Security Council and of its representatives, the individual efforts of certain members of the Council, and the attempts of the parties concerned.

It is a tribute to the Council and to the parties that a cease-fire was achieved on 1 January 1949 as part of an agreement by India and Pakistan for demilitarization and for a United Nations sponsored plebiscite. Unfortunately, however, and despite the best efforts of the Council and its representatives, the parties have failed to agree on carrying out the next two steps. It is understandable that strong emotion should be involved on both sides of this problem.

One of the first concerns of the Council has always been that nothing should be done which might aggravate the situation. This was made clear and explicit in the Council's first resolution on the case adopted on 17 January 1948. We trust that both parties will do their utmost to continue to approach this question with restraint and that they will take such measures as are within their power to assure the maintenance of a peaceful atmosphere.

We appreciate the fact that the representative of India changed the arrangement of his presentation so as to deal with the Constituent Assembly yesterday afternoon in order to suit the convenience of the Council. It is to this point alone that I now refer and to which the draft resolution is addressed. With respect to the substance of the broad issue, we are studying the remarks both of the representative of India and of Pakistan carefully and we will express ourselves on the issue at the proper time.

The Council will recall that on 30 March 1951 it took note of the proposed convening of a constituent assembly in Kashmir and affirmed that any action that the Assembly might take to determine the future affiliation of the State would not constitute a disposition of the State in conformity with the agreed principle relating to the free and impartial plebiscite. The draft resolution we are considering today is basically a reaffirmation of that statement by the Council. It has been occasioned by a complaint that the Assembly referred to in the March 1951 resolution has not only convened but has drawn up and promulgated a Constitution, and that this Constitution does, among other things, relate to the affiliation of the State to India.

Differing interpretations have been put on the meaning and effect of this and other actions relating to the connexion between Kashmir and India, extending back to the accession instrument by the Maharajah of 26 October 1947. But one thing is clear. The Constitution approved by the Constituent Assembly of Kashmir deals, among other things, with the affiliation of the State. This represents an important new element in the situation, and the Security Council is bound, in view of its previous stand, to take note of this. The position taken by the Security Council in 1951, in our opinion, remains valid, and we have adhered to it in this new draft resolution.

Finally, the United States lays stress on the final paragraph of the draft resolution before us. In the absence of a direct mutually acceptable agreement between the parties, the Council has an obligation to continue its efforts, as it has in the past, to seek and to support any fruitful suggestion in this difficult case.

Vesga Duarte (Colombia) (interpretation from Spanish): In co-sponsoring the draft resolution before the Council, my delegation has done no more than to be consistent with its previous conduct in the Council. Due to a happy circumstance, Colombia was a member of the Council in

1948, when this matter came before us for consideration, and from that time on we have taken the stand which we take today—that is, a position of co-operation with the majority of the members of the Council as far as possible, so that the Council may peacefully solve this controversy between India and Pakistan.

Perhaps I might add that Colombia's interest in this question reflects to some extent the concern of Latin American countries with this type of problem. When we ourselves became independent of our mother country, we had similar problems among us in South America, and experience showed us that only by peaceful means could we achieve lasting solutions.

As has been explained by most of the representatives who have spoken here, this proposal refers, above all, to the procedure to be followed. We know that in international affairs procedure represents almost everything, and consequently it is very important that it be understood that, in reaffirming previous decisions of the Council, as we co-sponsors are asking the Council to do, we are not passing on the substance of the problem. Rather, we are proposing that the forthcoming decision be taken in an atmosphere of peace and understanding between these two great countries, Pakistan and India.

Like the representative of Cuba, I take great pleasure in paying tribute to the magnificent statement made by the representative of India, who held the attention of the Council for more than eight hours with his very great oratorical power. I am happy that, at the end of his speech, he expressed the wish, which seemed to me sincere, that the question would find a peaceful and lasting solution. In co-sponsoring this draft resolution, the Colombian delegation does no more than to express the hope that this wish will be fulfilled as soon as possible.

Tsiang (China): The Kahmir question is in a way unique among the questions which have come before the Security Council. Usually, questions of this kind concern, on the one side, a country in Asia or Africa and, on the other side, some European country. Here is a dispute between two Asian countries.

When India asked that the Kashmir question be put on the agenda of the Security Council at the beginning of 1948, I was in my own country. My Government instructed me to return to the Headquarters of the United Nations immediately and to do my utmost to promote a peaceful settlement of this question. My Government did that not because it made any difference to China whether Kashmir acceded to India or to Pakistan. My Government had a special reason for its active interest in this question.

We in China felt that, at the end of the Second World War, there emerged in fact a new Asia—in other words, for the first time in our history, the possibility of a community of Asian nations. Of course, in the old centuries, there were many Asian nations but, because of the lack of means of communication, there was little of a community. In the nineteenth century the sense of a community grew, but it was not a community of independent nations. It was only at the end of the Second World War that we in Asia faced the reality of the possibility of a community of nations. My Government fondly hoped that we in Asia might even do better than the European nations had done in the past.

In China we did not know too much about European history, but even schoolchildren knew something about Alsace-Lorraine. The Chinese newspapers, at the beginning of 1948, frequently expressed the hope that Kashmir might not become an Asian Alsace-Lorraine to poison this new hopeful community of Asian nations. It was from that angle that my Government instructed me to return to my post as soon as possible and to do active duty in the settlement of this problem.

When I joined the debate I found that the interest in promoting a peaceful settlement of the Kashmir problem was general. I have never seen the members of the Security Council sharing the burdens of discussion and proposal so equally as on this Kashmir question. Every delegation was working actively towards a peaceful solution.

During the month of January the Council was presided over by Mr. van Langenhove of Belgium. In addition to presiding over this body, he was in daily consultation with the delegations of Pakistan and India and tried, through private conversations, to bring before the Council some solution that would be agreed. In February General McNaughton of Canada did the same thing. In March it was my turn to preside and I tried to do something. Then, of course, there was the representative of Colombia, whom I remember very well, Mr. Lopez, who, I was told, had once been the President of his country. He did his level best to contribute towards a peaceful solution. Then, as I recall, there was Mr. Philip Noel Baker. Everybody worked hard on this.

Now, I should like to recall another feature of the Security Council of that time. I think I can honestly say that no question has ever been considered by members of this Council in such an objective, unprejudiced, unbiased way as this Kashmir question. Ordinarily, in the United Nations, we know that delegation A might be pro-axis and anti-war. In the Kashmir debate, in spite of many private and public discussions, we were all puzzled as to who was for A and against B and who was against A and for B. Especially do I remember Mr. Noel Baker. I have never seen a man watch his words in public and in private so carefully as Mr. Noel Baker watched his in this matter. This objectivity of the Council of that time would, I think, be manifest to anybody who would read the records of the Council of 1948, 1949, 1950 and 1951.

I should like to call the attention of this Council to another feature. At that time there was no SEATO; there was no Baghdad Pact; and Pakistan, I think, did not have a single military ally. Whether, at the present time, the military alliances and friendships of Pakistan could influence the members of the Council or not, I could not presume to judge, but that kind of prejudice certainly did not exist in the Council in 1948, 1949 or 1950.

Since this debate is in fact the renewal of the debate of that period, I thought that this brief report of the atmosphere of that time might be useful to my colleagues today.

The representative of India repeated both yesterday and today that the question before the Council is not a territorial dispute. He says it is the aggression of Pakistan against India. The letter in which India asked the Security Council to put this question on the agenda contains the word "aggression", and I quote the particular phrase in which it is used:

> *..The Government of India request the Security Council to call upon Pakistan to put an end immediately to the giving of such assistance, which is an act of aggression against India...

Assistance in that phrase meant, of course, a complaint of military assistance to Azad Kashmir and to tribesmen, and, in the course of the presentation of the Indian case by Mr. Ayyangar, that charge was repeated a number of times.

Mr. Zafrullah Khan, representative of Pakistan at that time, made a counter-charge of acts of aggression by India against Pakistan. So we faced these rival charges: aggression by Pakistan against India; aggression by India against Pakistan.

I hope that members of this Council today will take the time to read the records of those years. No member of the Council ever gave serious consideration to either charge, the charge of India or the charge of Pakistan. There never was a proposal made dealing specifically with aggression. In fact, there was no systematic or serious consideration of that charge and of the counter-charge of aggression. The members of the Council, without consultation, all came to the same conclusion, that the charge of aggression should be bypassed.

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*Security Council Official Records, Supplement for November 1948, Annex 28, page 139.

That charge was never taken up, never sifted, never even given serious consideration, and I believe it was very wise of the Council to by-pass that charge.

Now it is said that this is not a dispute with regard to territory. However, I cannot understand why anybody should say that this is not a dispute with regard to territory. The basic question is whether the State of Jammu and Kashmir should become a part of India or a part of Pakistan. That is what is in dispute. Is that not a dispute with regard to territory?

This dispute has another peculiar feature. From the very beginning, the Council began with an agreement between two parties. In fact, before the two parties directly concerned ever appeared before the Council, the two parties agreed that the plebiscite should be the answer. What did the Council do? The Council tried to build a solution on this prior agreement that the two parties had before they came to this Council. So the idea of a plebiscite was not imposed by the Council on the two parties.

In their public statements the statesmen of both countries. India and Pakistan, have stated that they would be willing to let the wishes of the people of Kashmir decide the future of that State. In this Council, in his very first statement, the Indian representative, Mr. Gopalaswami Ayyangar, had this to say:

> The question of the future status of Kashmir vis-a-vis her neighbours and the world at large, and a further question, namely, whether she should withdraw from her accession to India, and either accede to Pakistan or remain independent, with a right to claim admission as a Member of the United Nations—all this we have recognized to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them.[1]

This feature of the discussion is rather rare. We here have known cases when weeks and months of debate have failed to find any element of agreement, but in connexion with the Kashmir dispute we began with a major agreement that the final decision as to the future of Kashmir should be left to the people of Kashmir.

In spite of that good start, we have not had much success. The problem of a plebiscite has bogged down under the conditions for a plebiscite. The Council has spent many hours trying to solve that problem. Our Commissions and our representatives sent to India and Pakistan have spent many weeks trying to solve that problem.

What the Council and the Commission and the representatives tried to do was this. If we could secure agreement between the two parties with regard to some particular condition, we were happy, and we put that down on paper immediately as a condition to which both parties agreed. But when we met with some point on which the two parties fell apart we were all patient to listen to the viewpoints of both and in our fairness we tried to draw a middle line and reach a compromise which we knew that neither party would entirely like but which we thought might be fair enough that both parties would, after all, accept it.

That has not occurred. It is not necessary—and I would not presume to try—to assign blame and responsibility in regard to these conditions. However, I should like to say that a plebiscite was not only agreed on before the two parties came to this Council; it was the unanimous belief of the members of the Council that a plebiscite was the solution.

Furthermore, what is a plebiscite? A plebiscite, in terms of the Charter, would mean the self-determination of a people. Self-determination is expressed through a plebiscite. I would say that all Members of the United Nations, by becoming Members, by subscribing to the Charter, would have to accept the plebiscite.

If we accept a plebiscite we mean, of course, a fair and impartial plebiscite. In regard to this point that plebiscite must be fair and impartial, I remember very well a sentence that Mr. Noel Baker said to the Council during that period. He told us that the plebiscite not only must be fair and impartial in reality but it must be fair and impartial even in appearance. This fairness and impartiality could sway the passions of peoples. It could decide the question of peace or war.

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[1] Security Council Official Records, 227th meeting, p. 29.

If we honestly and seriously believe that the future of Kashmir should be decided by a plebiscite, I believe, both parties should not be too meticulous about conditions. The setting of conditions should not be allowed to obstruct the main purpose, that is, to allow the people of Kashmir to have the right of self-determination.

We were told this morning that much has changed. Indeed, some things have changed, but as I listened to the two opening speeches in this debate, I confess, I did not see much change. I was afraid that the representatives from other parts of the world might say that, after all, the old European belief about the unchanging East was accurate. Certain things have changed, but the basic features of the problem have not changed. I believe the principle of a solution should not change and cannot change.

The draft resolution is a simple and modest one. It really reaffirms the stand that the Council has taken in regard to this dispute, and therefore my delegation will support it.

Jarring (Sweden): As a newly elected member of the Security Council, Sweden is now called upon for the first time to pronounce itself on the India-Pakistan question, whereas other members have taken part in previous deliberations on the subject. Hence, now that the question has once again been submitted to the Council, my Government does not consider itself committed to any particular way of dealing with this matter.

In accordance with our obvious duty, we have studied the various aspects of the problem with a view to forming an opinion of what solution should be sought and what procedure should be followed. A primary requirement must be that both parties should refrain from unilateral measures which would alter the *status quo*. Thus, for the time being the present demarcation line must be respected. This implies that the use of force aimed at changing the *status quo* must be excluded. It also implies that the parties should desist from taking internal legislative measures by which the State of Jammu and Kashmir would be considered definitely incorporated in the territory of one of the two parties and which would prejudice the Security Council's continued deliberations on this matter.

It follows from what I have said that my delegation is prepared to vote in favour of the draft resolution now before the Council. Our affirmative vote, however, should not be construed to mean that we have taken a definite stand on the resolutions enumerated in the present draft resolution. In my Government's opinion, the legal issues involved in this matter require further and thorough study, particularly in the light of the statements made by the representatives of India and Pakistan. I therefore reserve my right to revert to this matter at a later stage of the Council's discussions.

Sobolev (Union of Soviet Socialist Republics) (Interpretation from Russian): The Security Council is once again discussing the so-called "Kashmir question". As is known, this question first appeared before the Security Council more than nine years ago. At that time it was raised as a question of protecting the population of Kashmir from the hostile activities of certain tribes coming from Pakistan territory and later against the activities of regular Pakistan troops. Subsequently, in the course of the discussion of that question in the Security Council, the original meaning of the question was changed and the Security Council, unfortunately, focussed its attention not on assistance in solving the question of Kashmir under the conditions of a direct agreement between the parties, but on the preparation of a plebiscite with interference from outside.

The Soviet Union has always adopted, and continues to adopt, an objective and impartial position which corresponds to the principles of democracy and the strengthening of friendly relations between the peoples of this region. The Kashmir question did not arise among the people of Kashmir itself, it was created almost nine years ago by some Powers which, in every way, attempt to inflate differences between the countries which are carrying out a struggle for national independence and freedom. The position of these Powers in the Kashmir question was not determined by a wish to solve this question in accordance with the interests of the Kashmir people themselves and in the interests of India and Pakistan. These Powers were guided most of all by their own interest to penetrate into this region, which has an important strategic significance.

Of course, such a policy is in complete contradiction to the real interests of the Kashmir people, who are attempting to carry out a peaceful and creative life and who have no desire to become the objective of imperialist designs.

In an attempt to put an end to the vague and indefinite status and to establish political stability, the Kashmir people in 1951 elected a Constituent Assembly. This Constituent Assembly passed a number of important laws, including a law in 1954 which confirmed the accession of the State of Jammu and Kashmir to India. In 1956, the Constituent Assembly of Kashmir adopted the Constitution of the State, according to which the State would enjoy rights of autonomy within the Republic of India.

Thus the question of Kashmir has been settled by the people of Kashmir themselves. They decided that Kashmir is an integral part of the Republic of India. The Security Council cannot overlook these facts.

In substance, the draft resolution submitted by the delegations of Australia, Colombia, Cuba, the United Kingdom, and the United States, in the view of the Soviet delegation, does not take account of the real state of affairs in Kashmir and to a certain extent throws doubt on the fact that the Kashmir question has already been settled in accordance with the expression of the will of the people of Kashmir. The draft resolution just mentioned refers to the resolution of the Security Council of 30 March 1951. As is known, the Soviet Union had already stated its negative attitude at that time as regards that resolution inasmuch as it was from the outset unacceptable to one of the parties to the dispute and therefore could not serve as a basis for a settlement of the controversial questions between India and Pakistan. Now, once again, an attempt is being made to reaffirm the provisions of that resolution of the Council, completely ignoring the basic changes which have taken place in Kashmir since that time.

The delegation of the Soviet Union sees no special advantage in the adoption of a new resolution to which one of the parties to the controversy objects. Guided by this consideration, the Soviet delegation will determine its own attitude towards this draft resolution.

As to the differences which still exist between India and Pakistan on the Kashmir question, their settlement, in our view, should be carried to an end peacefully by negotiations between both parties without any outside interference.

The Security Council for its part should promote the achievement of a peaceful settlement of this question and should therefore recommend to the parties to settle existing differences by means of bilateral negotiations.

Jawad (Iraq): For several reasons my delegation would have liked to make on this occasion a statement on the substance of the matter, to express our position regarding the Kashmir dispute. We believe that such a statement is necessary because of the special position of Iraq in relation to India and Pakistan, two countries with whom we have close and friendly ties, past and present, ties of a historical, economic and religious character. Furthermore, Iraq is taking part for the first time in a discussion on the Kashmir question which has been pending for the last nine years and for this reason we thought it would be appropriate to make our opinion known to the two countries concerned and to others who have special interests in the future of Kashmir.

In view of the recent developments in connexion with the step taken by the Srinagar Constituent Assembly regarding the integation of Kashmir into India on 26 January, however, we have decided to postpone our statement to a future meeting, as we feel that it is extremely essential for certain preliminary decisions to be arrived at today to reaffirm the Council's previous decisions regarding the basis and methods for deciding the future of the people of Kashmir.

We consider that the previous decisions of the Council were in conformity with the principles of the Charter. After hearing the statements of the representatives of India and Pakistan, we are inclined to believe that the issue remains basically the same as it was when it was dealt with for the last time in 1952. We find that the draft resolution submitted by the five Powers meets the immediate requirements of the present situation, as the last paragraph of that resolution keeps the question under consideration by the Council and we feel sure that this will assist the Council to find a peaceful and lasting solution of the dispute.

My delegation therefore supports the draft resolution in question and reserves its right to speak on the substance of the problem at a later meeting.

Georges-Picot (France) (interpretation from French): In view of the resolutions which have already been adopted and what has already been said by each of the parties involved and members of this Council, the French delegation at first wondered if the resolution which has been submitted was really essential to dispel certain doubts which had arisen. We think, after reflection, that this draft resolution as a stop-gap measure has a *raison d'etre* if it provides us with the necessary time so as to avoid hastening through the debate but devoting all the time which they deserve to the questions before us.

In this sense the French delegation supports the draft resolution submitted by Australia, Colombia, Cuba, United Kingdom and United States of America, and reserves its right to speak on the substance of the question in a later debate.

The President: I shall now speak as the representative of the Philippines.

My Government has approached the question now before the Security Council with the utmost sympathy towards the two nations, for which we entertain the friendliest of feelings. The Philippines is not deciding this matter in favour of one nation against another. We are not taking sides. We are not, in fact, sitting as if in judgement of a case. We have not the least desire to see the matter aggravated by an exacerbation of misgivings which can but lead to a possible breach of the peace.

We have noted at the outset of the negotiations between India and Pakistan a commendable disposition on the part of both to make things easier for them to come to terms. We have hoped sincerely and will continue to hope, that the original spirit of mutual concession would prevail throughout the negotiations in the interests of the peace and welfare of both nations, for which, I reiterate, the Philippines has nothing but the utmost goodwill.

My Government believes with the United Nations representative for India and Pakistan that direct negotiations may pave the way towards the definitive solution of the nine-year-old dispute between the two countries.

This is not to belittle the achievement of Dr. Frank Graham and his predecessors, whose efforts at mediation have considerably narrowed down the area of disagreement between the parties on the question of demilitarization. As a matter of fact, the last resolution adopted by the Security Council on 23 December 1952, urged the parties to enter into immediate negotiations in order to agree on the remaining issue, namely the specific number of forces to remain on each side of the cease-fire-line. The fifth report of Dr. Graham would seem to imply that perhaps agreement would be forthcoming if one or the other of the parties were willing to make greater concessions than he would be entitled to ask objectively in his capacity as mediator.

Be that as it may, the representative of Pakistan reports that the attempts of his country to secure agreement through direct parleys had proved abortive. On his part, the representative of India seems to imply that a truce agreement is no longer possible because of a breach of the conditions which could have put it in operation.

My Government is at a loss to accept either conclusion in the face of the claim put forward by each party that it has done, is doing, or will do, its best to achieve agreement.

Incidentally, may I say at this juncture that the distinguished representatives of India and Pakistan who addressed the Council have given a good account of themselves in the presentation of their respective sides. The Foreign Minister of Pakistan, with his sobriety and moderation, has shown himself to be an able spokesman of his country. Mr. V. Krishna Menon, who I have known for many years, has once more demonstrated his keen mind, his dialectic skill and his unsurpassed argumentative power.

The joint communique issued by the Prime Ministers of India and Pakistan at the end of their meeting in Delhi on 20 August 1953 was a distinct step forward, not merely in its reiteration of the principle of ascertaining the wishes of the people of the State of Jammu and Kashmir through a fair and impartial plebiscite and in the decision to have the Plebiscite Administrator appointed by the end of April 1954, but in the common determination to resolve before that date the preliminary issues that had hitherto blocked progress towards the holding of a plebiscite.

That the promise of this auspicious agreement between the two Prime Ministers was not fulfilled is to be regretted. It is not for me to say which party is to blame, as I have already stated that the Philippines is not deciding this issue in favour of one nation against another. Rather it is for me to express the hope that the good will and the spirit of conciliation that brought about the agreement—the and indeed that brought about previous agreements—could again be invoked.

It is worthwhile to recall that the basic resolution of the United Nations Commission of 5 January 1949 merely incorporated the proposals governing the cessation of hostilities which were explored in conversations between the representatives of India and Pakistan, and later accepted by their respective Governments.

Perhaps another attempt at direct conversations on the ministerial level between the two parties is in order. Or perhaps the experts committees brought into being by the joint communique of 20 August 1953, which had covered considerable ground in studying the thorny problem of demilitarization, could be reactivated.

It is gratifying to note from the statements of the representatives of India and Pakistan that their countries had not withdrawn their acceptance of the basic resolutions of the United Nations Commission of 13 August 1948 and 5 January 1949. The representative of Pakistan affirms that his Government accepts the basic resolutions of the United Nations Commission as an international obligation. The representative of India affirms that his Government stands by its international commitments.

Under the circumstances, my Government entertains the hope that continued and persistant attempts at negotiation between India and Pakistan on the future status of the State of Jammu and Kashmir cannot but be crowned with eventual success. The recent trade agreement signed by the two countries, so aptly underscored here by the representative of India, is an encouraging sign that they could come together and agree on a satisfactory solution of common problems.

It may have been the original intention of India to seize the Security Council not of a dispute but of a situation which might, by its continuance, endanger the maintenance of peace and security. However, the subsequent filing of a counter-complaint by Pakistan has converted the situation into a dispute within the meaning of the Charter. This is affirmed in the resolution of the Council of 21 April 1948, in which it is stated "that the continuation of the dispute is likely to endanger international peace and security."

There is, however, a disturbing element that has been drawn into the picture which may wreck all prospects of peaceful negotiation or peaceful settlement of the dispute. I refer to the allegation of Pakistan that on Saturday, 26 January, the constitutional step will be taken to integrate the State of Jammu and Kashmir formally into India.

The representative of India, on the other hand, states that nothing of the sort is going to happen on 26 January, and that the critical date, if there was one, was 7 November 1956 when certain provisions of the State Constitution took effect, among them, section 3, which states that "The State of Jammu and Kashmir is and shall be an integral part of the Union of India". In view of these two conflicting statements, we have the draft resolution sponsored by five Powers before the Council.

Ever since the Security Council was seized of the dispute, it has repeatedly called upon the parties to refrain from any action which might aggravate the situation or which would be likely to prejudice a just and peaceful settlement of the dispute.

On the particular question of the convening of a Constituent Assembly as recommended by the "All Jammu and Kashmir National Conference", which was the subject of a previous complaint by Pakistan, the representative of India gave his solemn assurance that the Constituent Assembly was not intended to prejudice the issues before the Security Council or to come in its way, and that while the Constituent Assembly might, if it so desired, express an opinion on the question of accession, it could take no decision on it.

The Security Council was explicit in its disapproval of the avowed purpose of the Constituent Assembly to determine the "future shape and affiliation of the State of Jammu and Kashmir". The Council's resolution of 30 March 1951 affirmed that any action that the Constituent Assembly might attempt to take to determine the future shape and affiliation of the entire State, or any part thereof, would violate the agreed principle that:

> the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

Again, on 29 May 1951, the Council approved a message to India and Pakistan which noted with satisfaction the assurances given by the representative of India and stated that it was the sense of the Council that the reports contained in the communications from Pakistan, if correct, would involve procedures in conflict with the commitments of the parties to determine the future accession of Jammu and Kashmir by a fair and impartial plebiscite conducted under the auspices of the United Nations.

I am sure that it would be well to reiterate the considered view of the Security Council on the matter so that there may be no misunderstanding as to its position. That view remains valid even it is found that the Constituent Assembly had its origins much earlier than the request for its convocation by the General Council of the All Jammu and Kashmir National Conference. It is for this reason that the Philippines supports and will vote in favour of the five-Power draft resolution.

I do not consider a vote in favour of the draft resolution as a vote against India for the simple reason that it is merely a reiteration of previous resolutions of the Security Council. And I have the highest respect for this august body so that I would not accuse it of bias whenever it approved any resolution which a party might consider adverse to its interests.

In all earnestness I would urge the parties to respect the standing resolutions of the Council, which have not been repealed or modified and are, therefore, as valid today as when they were adopted many years ago.

Those are the views of the Philippines on this question which has been before this body for quite a time. They have been, I submit, delivered here in the hope that they will help clarify the doubts over the facts of the issue and help this Council arrive at a clear appraisal of the dispute for the sake of a permanent settlement.

We are of Asia, and Pakistan and India are close to us, not only geographically but also by long historic association which has endured through the years. We know that both India and Pakistan want peace. Our desire is to see the two Governments come to an amicable settlement of their misunderstandings, and I hope to have contributed the efforts of my Government towards that end. With mutual tolerance on the part of the principal parties in this dispute they cannot, my Government trusts fail to achieve a solution of their problem to their mutual satisfaction and in the best interest of the people of Jammu and Kashmir.

The President: The representative of India has asked to speak.

Krishna Menon: In conformity with previous practice of the representatives of my Government before this Council, I ask for permission, as I am entitled to do under the Charter, to offer my observations on the present state of proceedings before this Council. I would like to preface my remarks by saying that one would consider that the purpose of speaking in an assembly of this kind is twofold. Sometimes the two purposes work together, sometimes one alone is possible. One purpose is to try and persuade your listeners in order that they might come to a judgement that is in conformity with the facts as one sees them. The other is for the purpose of registering a position so that at least at some future time, when considerations of a different character appear, the position would have been stated for the record.

In the past my Government has not paid adequate attention to this because, as has been repeatedly said, our overwhelming consideration at that time was, without being punctilious, to find a settlement. Obviously, in this hard world that kind of thing has its penalties.

So far as the present situation is concerned, we have no right to pronounce on this draft resolution. It is the Council's resolution. It does not bind us. In fact, I suppose some day it will be communicated to the Government of India, which will in turn, in the normal course of business, communicate it to the Government of Kashmir and to the newspapers in India, because it is not a resolution in which we have participated. The Security Council invited us to present our views, and in the normal course of business one would have thought that a resolution on this subject would take into account the presentation that has to be made by the parties which are called before the Security Council. That was the intention of the Charter.

I have no desire to raise unnecessary controversies, but the first draft of the resolution was in my hands before I had not only not finished speaking, but in the forenoon of yesterday. The alterations that have been made are alterations which are more convenient and suitable to the other side. Therefore, any suggestion that I had stated my case on the Constituent Assembly and therefore all they wanted to know had been made known, has not been borne out by facts.

I will not refer to private discussions, but I have here documents that have been circulated, and if other people can have them, I can have them. What did I say? My friend, Mr. Cabot Lodge expressed his appreciation of my having changed the arrangements of the meeting. What did I say? I said the following:

> I must confess that the atmosphere of crisis has been created, or some sort of D-Day or zero hour, for 26 January. But whatever may be the background which we are able to understand, we have the duty to point out what the facts are, and I have therefore decided to change the arrangement of my presentation,

(S/PV. 763, page 33-35) in order to show that there was not any kind of crisis or any thing of that kind.

Then I said the following at the end of the meeting, which the Council may well remember:

> I do not think I would be able to finish my statement in another hour. It will probably take two to two and a half hours, even if I condense everything. The whole of the argument in this case remains.

No one can possibly comfort his conscience in this matter by thinking that the first paragraph of this resolution represents the facts when it says:

> Having heard statements from representatives of the Governments of India and Pakistan concerning the dispute over the State of Jammu and Kashmir.

While we are not in a position, nor do we desire, to move any amendments, alterations or anything of that kind, I would not want it to be thought in my country that I have not pointed out when this resolution was hatched and when it came out.

Before I go further, I should also like to enter the objections of my Government to certain statements in the Australian submission before the Security Council. I have already elaborated them in my previous statements and I do not wish to take the time of the Council any further with them. This also applies to one other statement made in the Council: we are unable to agree to the two last sentences of the penultimate paragraph of the statement made by the representative of the United States. Those are specific matters to which I want to draw attention.

It has been put out that we are only reaffirming something and therefore are not doing anything new. With all respect, I should like to ask: since the whole burden of this argument was the reaffirmation, was a new decision—that is to say, it was ignoring all those facts which had been presented during the eight hours—if you come to a decision then you must reaffirm, you have decided on merits.

Therefore, while the Security Council, or those who sponsored this resolution or support it, can take that view, I submit that I am unable to take it. What is more, I have the responsibility to let the people and Government of India know that I have said in this Council that this resolution only takes care to remind us of those resolutions of the Security Council which we have, in express terms, declined to accept—that is, the resolutions of 21 April onward. I am not now referring to the resolutions of the Commission.

Secondly, the principle embodied in its resolutions, whether it covers all the detail that goes into these resolutions, also is somewhat of a perplexing problem to us. The representative of Australia told us that he was still in doubt about so many matters, but that has not prevented him from coming to a conclusion.

In this connexion, we are also likely to enquire in India whether it is necessary to reaffirm what, by implication in these speeches, is what the United States—in our opinion, erroneously—regards as an affirmed principle.

There are people who are likely to ask: Has the Security Council no concern about the other principles it affirmed—that is, there should be no aggressions, there should be no changing of the conditions that existed in the country, of annexations, of affiliations? The Security Council appears to be willing to sit long hours, even at night, in order to register its objections to what may appear in a constitution, on the ground it changes status. But my people would enquire: Why not at least equal anxiety in regard to other matters that change status? Why was not the Security Council concerned about the incorporation of a part of Kashmir into Pakistan by the Pakistan constitution? Why is the Security Council not equally concerned about the annexation of these territories, about the militarization of them, about the threats of war made in this room.

I say all this not because you will change the resolution, because it was quite obvious that, long before you had even called upon me to speak, on 16 January, the representatives of the United Kingdom and Australia had expressed their views as to what they would do. I referred to that in my opening statement yesterday.

These situations do produce some strange spectacles, on which I am entitled to comment because they are political matters. Here we have the representative of Her Britannic Majesty challenging an act of a legislature which has received the Royal assent. This is a very unusual procedure. And we are acting in terms of an act of the legislature which received at that time —fortunately for us—the Royal assent, and not after the termination of monarchy in India. Therefore, in doing what is being done, those people who are connected with those matters are not only challenging us but challenging their common law—because they have no constitutional law—their statutes, their tradition, and the power of the Royal Seal on a bill.

Now we go further and look at what the Commission says—and I am not going to make a long statement. The Commission says, in paragraph 249 of its third report—and I did not say this—but why the resolution passed eight years ago should have such significance, while the investigations of a Commission appointed by this Council and reported seriously would not pass muster with it, that also would be incomprehensible to the people of India and that world opinion which is uncommitted in this issue to one side or the other. This is what the Commission said:

> In essence, the problem of the withdrawals lies in the fact that the sequence of the demilitarization of the State, as contained in the Commission's resolutions of 13 August and 5 January, is not adequate to solve the present situation. The situation in the State changed; the resolutions remain unchanged.

And you gentlemen today have thrown to the winds the caution that is in this: the situation in the State has changed the resolutions remain unchanged.

With great respect, I say you go a step further and you make sure that your resolutions remain fosilized, because you reaffirm them, preserved for posterity.

Now I must go to the position in regard to ourselves in the second paragraph. I want to say to you again, for the purposes of the record: This paragraph lacks propriety in respect to the Head of the State of Kashmir, a member of the former ruling house.

And I am again surprised that the representative of the United Kingdom should have put his name to it, because the Constituent Assembly in Kashmir did not emanate from the Jammu and Kashmir Conference. This body, which is a body of the representatives of the State and not of private organizations—when the representative of the Government of India has placed before you the constitutional document that deals with it, then to affirm in the resolution that the Constituent Assembly proceeds from some resolution passed by however important a body it is, which has no place either in the constitution of India or in its constituent unit in Kashmir, is, I submit, a piece of impropriety. But we have no remedy, because you have the votes—I mean, the Council has the votes.

Therefore, I submit that this paragraph, in normal circumstances, is one that would not be passed by an assembly charged with this amount of dignity and this amount of deference to protocol. The Head of the State of Kashmir is entitled, in any case, to consideration as the Head of that State in the normal way.

Reference has been made to what my predecessor, Sir B. N. Rau, said in this Council, and I should have thought that that statement was sufficient to prevent the Security Council from repeating its previous action because, while it may be purposeless to say so—because I have said it before—it is not the Constitution of Kashmir and the Constituent Assembly of Kashmir that make Kashmir integrated, as you call it, that make it a part of India. It is the act of accession under the act of a legislature which received the Royal assent in 1947. Therefore, this Constitution is not what makes any difference, and if the Council is not prepared to accept the statement of the Government of India in regard to this matter about which I have spoken—that the act of the Constituent Assembly flows from accession—what the Council has to challenge is the accession; and I submit that the Security Council is not competent to do so.

Secondly, I desire to submit that this draft resolution refers not merely to the Kashmir Constituent Assembly, but also to the State of India, because these provisions, against which this Council is entering its caveat and proposing this interdict, are part of the Constitution of India incorporated by a Presidential Order in 1954. Therefore, this declaration by the Council now is not merely a declaration in respect of the Kashmir Constitution. The Security Council is telling India what it can have in its Constitution, because if we are to follow this, surely we have to amend the Indian Constitution because the Security Council has asked us to do so.

I have heard a great many arguments in this building about domestic jurisdiction. I have myself on many occasions, on behalf of my Government taken the view that very few people can take shelter under domestic jurisdiction. But for the Security Council to give instructions about the Constitution of another country is the meaning of this declaration, because if the Constitution of Kashmir has to be interfered with, so has the Constitution of India.

Finally, I submit that the Constituent Assembly Act is what in law is called a declaratory act. It does not create anything; it simply affirms the existing state of affairs. And that is what Sir B. N. Rau told the Council. In fact, the Constituent Assembly of Kashmir could not bind the Union of India. If the Constituent Assembly passed some provision which was inconsistent with the Act of the Union, then that would be *ultra vires*, and therefore, no question of binding the Security Council by a resolution passed by a subordinate legislature, or even a national legislature, would arise. I should, therefore, like to read what Sir B. N. Rau said in 1951, which was six years ago, and my Government takes the view that in this case particularly, six years have changed a lot of things. At that time Sir B. N. Rau said:

> In effect, therefore, the revised draft resolution continues to ignore the basic facts of the situation in Kashmir, and it includes provisions which we have all along made amply clear that we cannot accept. For a peaceful settlement of the problem it is essential that a peaceful atmosphere should be created. The continuous and intensive propaganda in Pakisatn for *jehad*, and the levelling of wild and baseless charges against India, hardly provide a suitable background. Nor is the periodic re-agitation of the matter and the constant re-opening of closed issues calculated to promote a peaceful settlement of the question. India desires peace above everything—peace for the world and peace with all its neighbours. But there can be no lasting peace which is not based on fairness and justice.[1]

The only effect that this draft resolution can have, so far as our part of the world is concerned, is to re-agitate this question. It is contrary to the purpose of the Charter under which the United Nations is supposed to be a place for harmonizing conflicting interests. This merely sows the apple of discord once more. It makes no contribution to any settlement because, irrespective of any resolution, there are only two ways in which any settlement can be reached. One is imposition; and I submit that the United Nations has no power under the Charter of imposing a settlement. The other is by the agreement of the two parties. Therefore, today to record another resolution which reaffirms something that one party has rejected, reaffirms the large number of resolutions which we have rejected and which are eclipsed or absorbed by the resolutions of 13 August and 5 January is, in our submission, not calculated to promote the purposes of the United Nations or of the exercise by the Security Council of the tasks entrusted to it.

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[1] Security Council Official Records, 538th meeting, para. 22.

I have no doubt that those who put down this draft resolution were moved by the highest motives. I have no doubt that they believe this to be a step towards what they think is a settlement. But my Government has not merely to look at the sentiment involved in this matter; it must also look at its implications and its consequences. I therefore wish to state that our attitude towards this draft resolution is the same as our attitude towards previous resolutions.

Khan Noon (Pakistan): I have before me two pictures of Mr. Nehru and his Government. One painted by his representative here, and the other which I shall put to the Council.

According to Mr. Krishna Menon, Mr. Nehru and his Government have already gone back on their international agreements, have already annexed the State of Kashmir to India; it is already a *fait accompli*.

According to the picture of Mr. Nehru in my mind, I think that he is an honourable man representing an honourable people and although he and his Government have not implemented the agreement yet to hold a free and fair plebiscite under the auspices of the United Nations, not once has Mr. Nehru made a public statement that he will not honour that agreement. In every statement of Mr. Nehru, which one reads in the papers, in Parliament, he has always said that he would honour that agreement and that he would hold a free and fair plebiscite under the auspices of the United Nations.

Now, it is for the people of India to decide whether the picture of Mr. Nehru as painted by his representative here, or the picture that I have in my mind of Mr. Nehru as a gentleman, should be accepted by that great nation. Perhaps it will be a second occasion when Mr. Nehru will have an opportunity to disown what his representative has said here.

Krishna Menon: Mr. President, I did not rise to a point of order, because we in our country are accustomed to this. This is not a question of Mr. Nehru or of the picture anybody draws. It is a question of what is in the resolutions and what are the issues involved, and I think it is sheer impertinence for one representative to come here and challenge the position of the representative of another Government. I shall not go further.

I am sorry that you permitted this impropriety but, so far as we are concerned, there is not one word in the statements that I have made in this Council which can be interpreted to mean that we will not honour our international obligations. In fact, I requested this Council to act in accordance with the Charter in these matters. But each State Government is entitled to put its interpretation and, what is more, to draw the attention of the Council to all the circumstances and all the surrounding matters in connection with it.

If this debate is going to go on in the way in which it has gone on in the last three or four minutes, then we are not proceeding in the way that we proceeded on the previous day.

R.A
IN पुस्तकालय

I want to say for the purposes of the record that there is nothing that has been said on behalf of the Government of India which in the slightest degree indicates that the Government of India or the Union of India will dishonour any international obligations it has undertaken.

The President: I am sure the representative of India will agree with me that the word "impertinence" should be stricken out.

Krishna Menon: You can strike out a lot of other words. You can strike out the whole of it, as far I am concerned.

The President: It will be so done.

Krishna Menon: On a point of order. The representative said that what I said was not correct. What is the representative challenging? My credentials? I am prepared to make allowances for a representative's lack of experience of this body, but, on the other hand, when he starts talking in that way, if I did not say it was impertinence I would be less than a man.

The President: Is the Council ready to vote? A vote will now be taken on the draft resolution in document S/3778.

A vote was taken by show of hands.

In favour:	Australia, China, Colombia, Cuba, France, Iraq, Philippines, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.
Abstaining:	Union of Soviet Socialist Republics.

The President: The result of the vote is: 10 in favour, none against and 1 abstention. The draft resolution is adopted.

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